

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
County of Boone } ea.

December Session of the October Adjourned

Term. 20 05

In the County Commission of said county, on the 22nd day of December 20 05

the following, among other proceedings, were had, viz:

Now on this day the County Commission of the County of Boone does hereby authorize the Presiding Commissioner to sign the Amended Subgrant Agreement with Missouri Department of Natural Resources for Land Use Planning and Water Quality Restoration in the Bonne Femme Watershed.

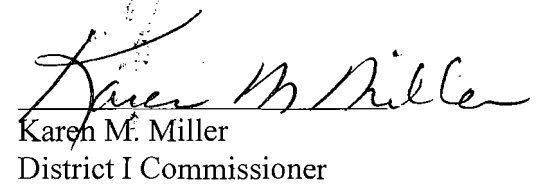
Done this 22nd day of December, 2005.



Keith Sehnarre
Presiding Commissioner

ATTEST:

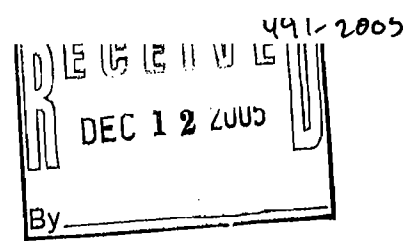
Wendy S. Noren
Wendy S. Noren by HCS
Clerk of the County Commission



Karen M. Miller
District I Commissioner

absent

Skip Elkin
District II Commissioner



Matt Blunt, Governor • Doyle Childers, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

November 29, 2005

Ms. Karen M. Miller
Associate Commissioner
Boone County Commission
801 E. Walnut
Columbia, MO 65201-7730

Dear Ms. Miller:

Enclosed for your signature are two copies of an amended subgrant agreement from the Department of Natural Resources to the Boone County Commission for the Land-Use Planning and Water Quality Restoration in Bonne Femme Creek Watershed Project. This amended subgrant agreement extends the budget period and adds the final 19 months of funding to accomplish the next phase of activities. During the budget period of June 1, 2003 through June 30, 2007, federal funding in the amount of \$727,400 will be provided by a Section 319 Nonpoint Source Implementation grant and the Boone County Commission will provide \$560,151 in nonfederal match for a project total of \$1,287,551. The project period is June 1, 2003 through June 30, 2007.

The Bonne Femme Watershed has several Outstanding State Resource Waters combined with sensitive karst areas that are vulnerable to water quality degradation. The Boone County Commission, along with its partners, realizes the importance of protecting this watershed. This project will address water pollution from leaky or non-maintained septic systems through demonstrations and landowner training, sediment from construction, storm water runoff, as well as nutrient and herbicide pollutants, in the Boone Femme Creek Watershed.

During this phase of the project, the Southern Boone County Karst Team and partners will develop a watershed land-use management plan, implement a cost share program and demonstrate best management practices throughout the watershed. In addition to these activities, the project manager and watershed conservationist will continue the education and outreach efforts started in the previous granting period. These efforts include Web site maintenance and development, photo journals, newsletters, and presentations to local organizations, schools, and planning boards. The Policy Advisory and Stakeholder committees also assist the steering committee by gaining public input, and developing land-use policy for this unique watershed.

Ms. Karen M. Miller
Page 2

Please review carefully the subgrant reporting requirements, Special Conditions and General Terms and Conditions. Pay particular attention to the MBE/WBE requirements and guidance by the federal government as a condition of federal awards. Sign both copies of the Financial Assistance Agreement and return one, including the Certificate Regarding Debarment and Suspension and Anti-Lobbying Act forms, within three weeks from the date of this letter, to the following address: Department of Natural Resources, Water Protection Program, Attn: Ms. Darlene Schaben, P.O. Box 176, Jefferson City, MO 65102. Failure to meet requirements agreed to in the subgrant may result in your agency being declared ineligible to participate in subsequent department grant opportunities.

If you have questions please contact your project manager, Ms. Georganne Bowman, at (573) 526-1157 or at the address above. Thank you.

Sincerely,

DEPARTMENT OF NATURAL RESOURCES



Doyle Childers
Director

DC:gbd

Enclosures

c: Mr. Jim Macy, Field Services Division
DNR, Northeast Regional Office

MISSOURI DEPARTMENT OF NATURAL RESOURCES
FINANCIAL ASSISTANCE AGREEMENT

Under the authority of _____ and subject to pertinent legislation, regulations and policies applicable to _____

1. Recipient (Name, Address) Boone County Commission 801 E. Walnut Columbia, MO 65201-7730	2. Project Number <u>G03-NPS-16</u> 3. Budget Period <u>June 1, 2003 – June 30, 2007</u> 4. Project Period <u>June 1, 2003 – June 30, 2007</u>
5. Recipient Project Manager <u>Bill Florea</u> Telephone No. <u>(573) 886-4330</u>	6. Type of Assistance (indicate by X) New Award _____ Amendment <u>X</u>
7. State Project Manager <u>Georganne Bowman</u> Telephone No. <u>(573) 526-1157</u>	8. Amendment ID <u># 2 (\$317,238 increase)</u>

9. Project Title and Description: Land-Use Planning and Water Quality Restoration in Bonne Femme Creek Watershed – this project will address the importance of protecting this sensitive watershed through info/ed activities, demonstrations, and landowner training.

10. Source of Funding/Year: FY02 319(h) Grant Codes: 780-0140-4461-5461-NW3C

11. Project Funding:

	<u>Amount</u>	<u>Percent</u>
Initial Award	<u>\$ 177,850</u>	<u>59%</u>
Initial Recipient Match	<u>\$ 135,702</u>	<u>41%</u>
Amended Award	<u>\$ 727,400</u>	<u>60%</u>
Amended Recipient Match	<u>\$ 560,151</u>	<u>40%</u>
Total Project Cost	<u>\$1,287,551</u>	<u>100%</u>

12. Amendment (describe): This 19-month extension and additional funding provides for the third phase of the project. During this phase, BMP cost-share practices will be implemented.

Previous Budget Period: 6/1/2003 – 11/30/2005; Project Period remains unchanged.

13. The recipient agrees to administer this agreement in accordance with:

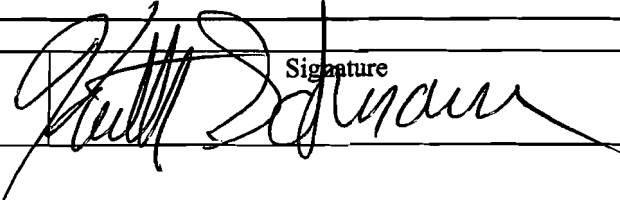
- a. All applicable federal and state regulations including but not limited to OMB Circulars A-110, A-87, & A-133
- b. Applicable program guidelines CFDA # 66-460
- c. Recipient application dated _____ as negotiated _____
- d. Detailed Scope of Work (Attachment # A-1)
- e. Budget Plan (Attachment # B)
- f. General Terms and Conditions (Attachment # D)
- g. Special Conditions (Attachment # C)
- h. Public Law _____ (Attachment # _____)
- i. Suspension/Debarment (Attachment # E)
- j. Certificate Regarding Lobbying (Attachment # H)
- k. Publications (Attachment # _____)
- l. Invoice (Attachment # A-2)
- m. EPA MBE/WBE Utilization (Attachment # G)
- n. Other Quarterly Report (Attachment A-3); Annual Reporting (Attachment A-4)

14. The assistance as described herein is hereby offered and accepted effective upon signature of authorized officials and on the date indicated in Parts 3 and 4 above.

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Department Director or Designee (typed) Doyle Childers, Director	Signature 	Date <u>11/29/05</u>
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RECIPIENT ORGANIZATION: _____

Name and Title (typed)	Signature 	Date
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ATTACHMENT A-1

TERMS OF AGREEMENT

(Amended Sections Only)

I. SUBGRANT AWARD

The Missouri Department of Natural Resources (the department), Division of Environmental Quality, Water Protection Program (WPP) and Boone County Commission agree to the plan of work and administrative procedures outlined herein.

- A. The department agrees to pay the subgrantee an amount not to exceed \$727,400 during the budget period June 1, 2003 through June 30, 2007, for the tasks specified in the Scope of Services and Schedule of Milestones.
- B. The Boone County Commission will ensure the completion of tasks specified in the Scope of Services and the Schedule of Milestones, as well as all required reporting. The Boone County Commission will provide match documentation for the budget period June 1, 2003 through June 30, 2007, in the amount of \$560,151.
- C. Conditions set forth in Attachment C, Special Conditions, and in Attachment D, General Terms and Conditions, shall be required and will govern the performance of this agreement.
- D. A Quality Assurance Project Plan (QAPP) must be updated as needed, and approved by the department's project manager prior to the first date of sampling.

V. SCOPE OF SERVICES

During the third phase of this project, the Boone County Commission, with the help of the Southern Boone County Karst Team, will do the following.

1. Conduct education and outreach activities to engage stakeholders, developers, and landowners in the Bonne Femme Watershed.
2. Monitor water quality in the Bonne Femme Watershed.
3. Conduct clean-up events in the watershed.
4. Update photo journal.
5. Work with developers to identify and complete a Conservation Development project.
6. Complete a Watershed Land Use Management Plan.
7. Develop cost-share to implement best management practices (BMPs) in the watershed, using the information gathered in the sub-watershed sensitivity analysis, and watershed management plan.
8. Continue to develop land use policy, through the steering, Policy and Stakeholder committees.
9. Maintain and update database, Web site, and GIS as needed.
10. Prepare invoices, progress reports (including monitoring data), and financial reports and submit quarterly to the department's WPP.

VI. SCHEDULE OF MILESTONES

	Task	Responsibility	Targeted Completion Date
1.	Continue water quality monitoring at 10 sites in Bonne Femme Watershed	USDA - ARS	Quarterly
2.	Initiate, then continue Stream Team monitoring at 2 sites	Watershed Conservationist	Semi-annually
3.	Attend local watershed coordination meetings	Watershed Conservationist	Ongoing
4.	Update and maintain web site	Watershed Conservationist	As needed
5.	Update and maintain watershed database	Watershed Conservationist	As needed
6.	Conduct 5 stream clean up events	Friends of RBMSP*, Stream Teams, Chouteau Grotto	Ongoing
7.	Conduct 18 steering committee meetings	Watershed Conservationist, Steering Committee	Monthly
8.	Coordinate activities of Stakeholder and Policy committees	Watershed Conservationist	Ongoing
9.	Maintain photo journal	Watershed Conservationist, Steering Committee	Ongoing
10.	Make minimum of 5 presentations to local groups.	Watershed Conservationist	Ongoing
11.	Develop agendas and chair quarterly stakeholder/policy committee meetings	Watershed Conservationist	Quarterly
12.	Develop News Releases and media coverage	Watershed Conservationist	As needed
13.	Conduct 2 Watershed Forums	Watershed Conservationist, Steering Committee	Sept 06, May 07
14.	Conduct 2 workshop for development community	Watershed Conservationist, Steering Committee	March 06, March 07
15.	Complete cost-share implementation plan	Watershed Conservationist, Steering Committee	January 06
16.	Implement Cost-Share program	Landowners, Watershed Conservationist, Project partners	Ongoing, starting Spring 06
17.	Conduct 3 BMP demonstration events	Watershed Conservationist	Feb 06, Feb 07
18.	Public meeting/open house, cost-share presentation	Watershed Conservationist, Steering Committee	Feb 06, Feb 07
19.	EPT indexing event	Contractor	March 06, Sept 06

20. Identify conservation Development opportunity	Watershed Conservationist Steering Committee	March 06
21. Complete phase 1 of Conservation Development	Landowner	April 07
22. Develop and mail annual newsletter	Urban Conservationist	July 06, May 07
23. Complete Watershed Land Use Plan (WMP)	Stakeholders	June 06
24. Conduct 3 public meetings about Land Use plan at different locations/ audiences throughout the watershed	Watershed Conservationist, Steering Committee,	Sept 06
25. Forward Watershed Land Use Plan recommendations to respective governing bodies	Stakeholders	Oct 06
26. Conduct on-site sewer workshop	UMC Extension	April 07
27. Complete plan for continuity of Watershed protection efforts: Web site, database, water quality monitoring	Watershed Conservationist	March 07
28. Plan and hold Closure event	Steering, Stakeholder, & Policy Advisory Committee, Watershed Conservationist	June 07
29. Submit reports/invoices to MoDNR Annual report Final report	Project Coordinator	Quarterly October 15 each year July 30, 2007

*Friends of Rock Bridge Memorial State Park

VII. PROJECT BUDGET

Bonne Femme Creek Watershed
Water Quality Restoration
Boone County Commission

June 1, 2003 – June 30, 2007

Total Federal Contribution	\$727,400
Total Nonfederal Contribution	\$560,151
Total Project Cost	\$1,287,551

(see Attachment B for budget period breakout.)

VIII. PROPOSED PAYMENT SCHEDULE

- A. Reimbursement to the subgrantee for the tasks described in the Scope of Services will be made according to the following schedule:

MAXIMUM EXPENSES	REIMBURSEMENT SCHEDULE	SUBMIT TO	PROJECT PERIOD	INVOICE FORMAT
\$727,400	Quarterly	MoDNR Fiscal Account Clerk	6/1/2003-6/30/2007	Attachment A-2

- B. Requests for reimbursement must be accompanied by a summary of the federal expenditures by budget category. For match reporting only, detailed documentation (such as time sheets, receipts, invoices, cost-share/incentive agreements, etc.) must be provided for cost-share and in-kind services. DNR reserves the right to require submittal of documentation for projects that have failed to meet grant requirements. Expenditures must be incurred within the budget period June 1, 2003 through June 30, 2007. See Attachment A-2, Invoice and Match Report, and Attachment D, General Terms and Conditions, for additional requirements.
- C. Final reimbursement will be made to the subgrantee upon documentation of adequate match and completion of all required quarterly reports and the final project report/evaluation. The subgrantee must request final reimbursement no later than 60 calendar days after the project end date. Any remaining project funds will be de-obligated.
- D. Up to twenty percent (20%) of the total federal award amount may be withheld pending satisfactory completion of the final project report/evaluation and submission to the department's WPP.

IX. REPORTING REQUIREMENTS

- A. Quarterly progress reports will be due September 15, December 15, March 15, and June 15 each year of the project. Please send one hard copy and a copy on diskette or via the Internet (georganne.bowman@dnr.mo.gov). Reports will describe project status; compare progress to scheduled milestones and explains any variances from expected progress. The reports shall follow the format shown on Attachment A-3, Quarterly Report.

- B. An **electronic** copy of the final product and the final project report must be submitted to the department's project manager by July 30, 2007. The final report, at a minimum, should describe accomplishments, how the goals/objectives described in the subgrant agreement were met, describe the tasks completed, products produced and an assessment of the impact of the project in addressing nonpoint source concerns. The report should make recommendations, where relevant, on how the results or experiences of the project could be applied elsewhere. A final budget should also be included that describes the funds spent, the match contribution and leftover funds, if any.
- C. An **electronic** copy of an annual report must be submitted to the department's project manager by October 15th each year throughout the project period and at the close of the project. The reports shall follow the format shown on Attachment A-4, NPS Annual Report Worksheet.
- D. A copy of the annual audit report or relevant portions of the audit report, that pertains to the project award are to be submitted to the department's project manager, if required under the federal OMB Circular A-133, Single Audit Act as described in the department's General Terms and Conditions.
- E. Applicants are allowed to earn program income in order to defray the cost of project activities funded by a 319 grant. Program income must be documented and reported through the receipt and expenditure invoicing process. Program income generated from supported activities including fees for services, rental income acquired under the grant, proceeds from the sale of articles fabricated under the grant, interest income and registration fees for a 319 sponsored event such as conferences, workshops, and training are some examples that must be reported.

**ATTACHMENT
A-2**

INVOICE & MATCH REPORT

TO: Missouri Department of Natural Resources Division of Environmental Quality Water Protection Program PO Box 176 Jefferson City, MO 65102 Attn: Diane Muenks	Date: Invoice No: Invoice Period: Agreement Amount: \$727,400
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Agreement Period: June 1, 2003 - June 30, 2007 Project Manager: Bill Florea Project Title: Land-Use Planning and Water Quality Restoration in Bonne Femme Creek Watershed	Subgrant No: G03-NPS-16
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FEDERAL

Budget Category	Project Budget	Prior Expenses per Category	Expenses this Invoice Period	Balance Remaining in Budget
Salary/Fringe	\$233,556.00	\$0.00	\$0.00	\$233,556.00
Travel	\$4,246.00	\$0.00	\$0.00	\$4,246.00
Equipment	\$0.00	\$0.00	\$0.00	\$0.00
Supplies	\$25,006.00	\$0.00	\$0.00	\$25,006.00
Contractual	\$404,592.00	\$0.00	\$0.00	\$404,592.00
Other	\$60,000.00	\$0.00	\$0.00	\$60,000.00
Indirect	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$727,400.00	\$0.00	\$0.00	\$727,400.00

NONFEDERAL (MATCH)

Match Budget Category	Match Budget	Prior Match per Category	Match this Invoice Period	Balance Remaining in Match Budget
Salary/Fringe	\$273,340.00	\$0.00	\$0.00	\$273,340.00
Travel	\$4,000.00	\$0.00	\$0.00	\$4,000.00
Equipment	\$0.00	\$0.00	\$0.00	\$0.00
Supplies	\$25,000.00	\$0.00	\$0.00	\$25,000.00
Contractual	\$227,811.00	\$0.00	\$0.00	\$227,811.00
Other	\$30,000.00	\$0.00	\$0.00	\$30,000.00
Indirect	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$560,151.00	\$0.00	\$0.00	\$560,151.00

MAKE CHECK PAYABLE TO: _____

I certify that to the best of my knowledge and belief the data above are correct, and that all outlays were in accordance with the grant agreement, and that payment is due and has not been previously requested.

SUBMITTED BY: _____
Project Manager Signature

Attachment A-3

Funding Source(s) _____

DNR Project Manager _____

QUARTERLY REPORT TO MDNR
FOR NONPOINT SOURCE PROJECTS

Quarter from _____ to _____

Project Name: _____

Project Administrator: _____

Sponsoring Agency Name and Address: _____

Project Period: _____

	319 funding	Match
Project Budget:	\$ _____	\$ _____
Project Expenditures to Date:	\$ _____	\$ _____
Balance:	\$ _____	\$ _____

Overall Project Progress:

Milestones/Tasks:

TASK #1

Projected Completion Date:

Date Completed: % Completed:

TASK #2

Projected Completion Date:

Date Completed: %Completed:

TASK #3

Projected Completion Date:

Date Completed: %Completed:

TASK #4

Projected Completion Date:

Date Completed: %Completed:

And so on for each milestone in the project workplan.

Comments:

Note: This form is authorized for reproduction.
Instructions for completing form are on the back.

Instructions for Completing the Quarterly Report

Funding Source(s): This can be found in section #10 of the Subgrant Assistance Agreement.

Quarter from - to: Identify the period this report covers.

DNR Project Officer: Indicate the DNR Project Officer/main contact for this project.

Project Name: Use the same name that is listed on the Subgrant Assistance Agreement.

Project Administrator: The sponsoring agency project manager.

Sponsoring Agency Name and Address: Self-explanatory.

Project Period: The date the project begins and ends, as identified on the Subgrant Assistant Agreement.

Project Budget: Funds awarded to date. These are the same figures as stated in section #11 of Subgrant Assistance Agreement. These amounts may change when there are amendments to the budget.

Project Expenditures to Date: Federal and match expenditures to date, **not** just for the quarter.

Balance: Budget to date minus expenditures to date.

Overall Project Progress: Brief summary of how the project is doing overall, e.g. behind schedule and why, on schedule, ahead of schedule, etc.

Milestones/Tasks: List the task titles and number them #1, #2, #3, etc. for the tasks in the project workplan in the Subgrant Assistance Agreement. Do not list one type of task more than once. For instance, if you will conduct several workshops at different times, list one task called *Workshops* with all workshop titles and completion dates listed under the task; and even though you will have, for example, 12 quarterly reports due in a 3-year period there should only be one task called *Quarterly Reports*.

Comments: Comments can be made under any task for extra information you wish to report for that task, problems with the task, detail of activity, etc.

Projected Completion Date: The anticipated completion date as identified in the workplan of the Subgrant Assistance Agreement.

Date Completed: The date the task is completed. It should be left blank until completed.

%(percent)Completed: The percent of the task is complete at the end of the quarter being reported.

ATTACHMENT A-4

NPS Annual Report Worksheet

FY ____ Project Period

Oct 1, ____ - Sept 30, ____

Project Name _____

Project Administrator _____

Subgrant No. _____

Please report your NPS activities for the following questions

Planning Activities

Number of groups formed to address regional or local NPS issues _____
(i.e., steering committees, watershed groups, policy committees, etc.) Please list

Number of meetings held _____

Number of planning documents produced _____

Watershed Management Plans _____

Number approved by DNR (w/ 9 key elements) _____

Acre size of watershed included in plan _____

Source Water Protection Plans _____

Acre size of watershed included in plan _____

Other – please list. _____

Total Maximum Daily Load (TMDL) Activities

Did your project develop a TMDL action plan _____

Did your project implement a TMDL action plan _____

Number of BMPs applied toward TMDL _____

Number of acres treated _____

Number of stream miles, or lake acres originally listed on 303(d) list as NPS pollution impaired,
now in compliance with Water Quality Standards (WQS) due to 319 project _____

Information/Education Activities

Number of Field Days conducted _____

Number of participants _____

Number of training workshops conducted _____

Number of participants _____

Number of demonstration sites displayed _____

Number of participants _____

Number of brochures/fact sheets developed _____

Number distributed _____

Number of reports developed (final, annual, presentations, etc.) _____

Number distributed _____

Number of newsletters developed _____

Number distributed _____

Number of NPS/project related presentations conducted _____

Number of participants _____

Number of clean-up events _____

Number of participants _____

Lbs. of trash collected _____

Monitoring/Assessment Activities

QAPP produced this year _____
QAPP revised this year _____
Number of Stream Teams formed _____
Number of training sessions conducted _____
Number of Volunteers trained _____
Number of sampling locations monitored _____
Number of sampling events _____

Goundwater Activities

Number of wells decommissioned or certified as properly plugged _____
Number of wells monitored/tested _____
Number of karst/sinkhole protection activities _____
Was your project involved in NPS groundwater contamination remediation activities _____
Please list _____

Agricultural Activities

Number of Comprehensive Nutrient Management Plans (CNMP) developed _____
Updated _____ implemented _____
Number of acres impacted by CNMP _____
Number of animals impacted by CNMP _____
Number of Animal Waste Facilities built _____
(Poultry stacking shed, compositors, lagoons, dairy waste facilities, pasture feeding facilities) List type? _____ Number _____
Lbs./tons of manure transferred out of watershed _____

Best Management Practices Activities (BMPs)

List type of BMP (buffer, wetland, grass waterways, CRP enrollment, stormwater management, erosion control, etc) _____
Number of BMP's implemented _____
Number of acres/feet impacted _____
Please list the NPS pollutant(s) impacted by BMP _____
(N, P, Sediments)
Quantify the reduction of NPS. (i.e., tons of soil saved, lbs. of nutrients reduced, lbs. of pesticides reduced.) _____

Thank you for taking the time to complete this worksheet. Your information is used by the NPS staff to report to EPA as a grant condition. This annual report examines all NPS activities in the State of Missouri.

To request an electronic copy of this form, call Darlene Schaben at (573) 751-7428.

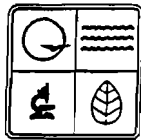
ATTACHMENT B

BUDGET

Boone County Commission
Boone Femme Creek Watershed
Water Quality Restoration

June 1, 2003 – June 30, 2007

	319 Funds	Nonfederal Match
Salary & Fringe	\$233,556	\$273,340
Travel	4,246	4,000
Equipment	-0-	-0-
Supplies	25,006	25,000
Contractual	404,592	227,811
Other	60,000	30,000
Indirect	-0-	-0-
TOTALS	\$727,400	\$560,151



Missouri Department of Natural Resources Grants

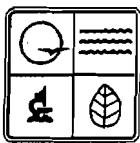
Identifying the Department in Grant Projects for Public Distribution

Recipients of grant funds from the Missouri Department of Natural Resources should identify the department as a funding source on all grant projects for public distribution. On most projects, identification should include the department's logo with the full-department name. This applies to publications, news releases, videos, displays and all other projects from which information may be obtained by reading, watching, or simply seeing the material. Camera-ready copies of the logo may be obtained by calling the Department of Natural Resources at (573) 751-4465.

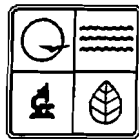
For other projects, such audiocassette tapes and news releases, the department should be identified audibly by including its full name. See the following guidelines for specific directions.

Logo Usage

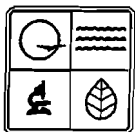
Logo: The Missouri Department of Natural Resources logo includes the full name of the department and the quadrangular graphic. The name should be placed below or to the right of the graphic. See examples below.



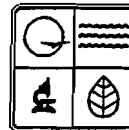
Missouri Department of Natural Resources



Missouri Department of Natural Resources



Missouri
Department of
Natural Resources



Missouri Department
of Natural Resources

Placement: The logo should be readily visible, either on the front or back cover of publications with separate covers. On folded publications, the logo should be visible on the back outer panel.

The logo should be aired at the end of video tapes long enough for easy visibility by viewers.

Size: Type size for the text of the logo in publications should be no smaller than 10 points. The logo art should be in proportion to the type size, as shown in examples above. When other sources of funding also are identified, the Missouri Department of Natural Resources logo shall be no smaller than the type size of other funding sources listed.

The logo should be aired at the end of videotapes large enough for easy visibility by viewers.

Additional When space allows, the following verbiage should precede the logo: "This project Credit: was funded by the..."

Note: When only a portion of the project is funded by department grant funds, "funded" may be replaced with "funded in part."

Audible Identification of the Department

Name: The department should be identified as follows:

The Missouri Department of Natural Resources

Credit: The following verbiage should be announced at the beginning and end of the project:

"This project was funded by the Missouri Department of Natural Resources."

Note: When only a portion of the project is funded by department grant funds, "funded" may be replaced with "funded in part."

ATTACHMENT C



Missouri Department of Natural Resources

Guidelines for Planning Information Activities

Maximizing the effectiveness of information activities requires considerable thought and planning. Choosing whether to use written or audio-visual material and how the project should look depend largely on the purpose of the project. The following steps describe issues and details to decide before any information piece is produced.

Definitions:

Information is the range of printed, spoken, recorded, taped, and displayed communications, and other materials that may be used in media relations, or in a marketing or education program.

Education is systematic instruction delivered to a targeted audience that facilitates learning through defined objectives, measured content, review, and evaluation.

Objective is a clearly stated goal that defines the desired result of the information or education program in terms of changes in behavior of the targeted audience.

Target Audience is the specific group of people to receive information or education.

Evaluation is a system for determining the effectiveness of the information or education program in fulfilling the objective.

Time Line is a schedule of deadlines to encourage the development of realistic objectives and to determine progress over a short period of time.

Information Plan

1. Define problem to be solved or situation to be changed
2. Set objective(s)
3. Determine target audience(s)
4. Choose most effective tool to convey message
5. Determine content
6. Define method of evaluation effectiveness of tool

Implementation Plan

1. Determine budget (consider the following):
 - research costs
 - production and duplication or printing costs
 - distribution costs (shipment, postage; see "Distribution Plan" below)
2. Set time line

Distribution Plan

1. Determine total number to be printed or copied
2. Determine possible methods and logistics for distribution
3. Decide most effective way to distribute materials or services
4. Define method of evaluating effectiveness of distribution

Materials Development

Information and Awareness Tools:

- fact sheets
- technical bulletins
- brochures
- news releases
- public service announcements
- paid advertisements
- newsletters
- periodicals
- audio-visual productions
- posters
- exhibits
- public meetings
- displays

Creation

1. Use most effective writing style and graphics to reach target audience
2. Review for technical content
3. Edit writing and graphics

*** Identifying the department**

Credit Missouri Department of Natural Resources as a funding source when applicable. Use full name of the department and its logo. Camera-ready copies of logo are available from Division of Environmental Quality, (573) 751-4465. (See "Missouri Department of Natural Resources Grants: Identifying the Department in Grant Projects for Public Distribution.")

*** Using recycled materials**

Any printed materials should be produced on recycled paper stock if at all possible.

*** should be addressed in grant applications.**

a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 32.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) While Part 32 does not apply to direct Federal procurement activities, which are governed by the Federal Acquisition Regulations (FAR) at 48 CFR Subpart 9.4, it is EPA's policy to integrate its administration of these two complementary debarment and suspension programs.

Subpart B—Effect of Action

§ 32.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 32.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 32.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(i) For the purposes of this paragraph, no transactions under EPA assistance programs are deemed agency-recognized emergencies or disasters.

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 32.205 Ineligible persons.

Persons who are ineligible, as defined in § 32.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 32.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 32.315 are excluded in accordance with the terms of their settlements. EPA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 32.215 Exception provision.

EPA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to

participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 32.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 32.505(a).

(a) The Director, Grants Administration Division, is the official authorized to grant exceptions.

§ 32.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 32.215.

§ 32.225 Failure to adhere to restrictions.

Except as permitted under § 32.215 or § 32.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.



Applicant Name: _____
Project/Program Title: _____

ANTI-LOBBYING ACT OF 1990 APPLICANT CERTIFICATION

This Certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required Certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies to the best of his or her knowledge and belief, that:

- (1) *No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*
- (2) *If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.*
- (3) *The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.*

Date

Signature of Authorized Representative

(R7PLMG/GRAD:12/94)

INSTRUCTIONS

MBE/WBE UTILIZATION UNDER FEDERAL ASSISTANCE AGREEMENTS AND INTERAGENCY AGREEMENTS EPA FORM 5700-52A

A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138, 12432, P.L. 102-389 and EPA Regulations Part 30 and 31. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to EPA within one month following the end of each Federal fiscal year quarter or annually as in the agreement.

B. Definitions:

Procurement is the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A *contract* is a written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for equipment, services, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.

A *minority business enterprise (MBE)* is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners.

U.S. citizenship is required. Recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive order 11625. The reporting contact at EPA can provide additional information.

A *woman business enterprise (WBE)* is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one

or more women and (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are required to be documented:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

C. Instructions for Part I:

- 1a. Complete Federal fiscal year.
- 1b. Check applicable reporting box quarterly or annually. **(Federal fiscal year runs from October 1 through September 30.)**
- 1c. Indicate if this is a change to previous year or quarter. **(Highlight items to be revised and provide explanation in Block No.6-Comments.)**
- 2a-c. **"Will be provided by EPA."**

2. Primary Specifications

- 2.1. **ITEMS TO BE PROVIDED** – Boone County, hereafter referred to as “County”, proposes to contract with an individual(s) or organization(s), hereinafter referred to as “Contractor” for a Term and Supply contract for furnishing daily **Electronic Media Off-Site Storage Service** for the Boone County Information Technology department as detailed in the following specifications.
- 2.2. **Contract Documents** - The successful bidder(s) shall be obligated to enter into a written contract with the County within 30 days of award on contract forms provided by the County.
- 2.2.1. **Contract Period** - The Term and Supply Contract period shall be from January 1, 2006 through December 31, 2006, but may be automatically renewed for up to an additional four (4) one-year periods unless canceled by either party.
- 2.2.2. **Contract Extension** - The County Purchasing Director may exercise the option to extend the contract on a month-to-month basis for a maximum of 6 months from the date of the third contract period expiration if it is deemed to be in the best interest of Boone County.
- 2.3. **Background Information:** The Boone County Information Technology Department backs up each file server and AS/400 every night. The media (currently tapes) are labeled, cycled and re-used in the daily backups. The County backups are performed every business day, Monday through Friday.
- 2.4. **Introduction and Purpose:** The purpose of this bid is to provide a complete daily **Electronic Media Off-Site Storage Service** for providing daily (Monday – Friday) pickup of Electronic Media, storage of media, and a rotation and return of media. Electronic media is defined as magnetic tapes, CDs, DVDs, etc. This will result in dropping off the media currently in storage and picking up the backup media created two business days prior to the current day, and storing said media in off-site, climate controlled facilities. As the County does not perform backups on weekends or holidays, drop off and pickup will not be necessary by the Contractor on these days. This project will be awarded to one vendor who will be responsible for picking up media, and storing and returning to designated location(s).
- 2.5. **DETAILED SPECIFICATIONS**
- 2.5.1. **Storage and Pickup:** Storage and Pickup shall meet the following detailed specifications:
- 2.5.1.1. Contractor shall transport up to 20 media per day.
- 2.5.1.2. Media shall be picked up from one site daily, Monday through Friday by courier service.
- 2.5.1.3. Bidder shall provide pricing on response page for scheduled pick up and delivery of media to one location – Boone County Government Center at 801 E. Walnut, Columbia, MO 65201.
- 2.5.2. **Building:** Storage facility should meet the following detailed specifications:
- 2.5.2.1. Constructed of concrete and steel, or a comparable solution (provide details).
- 2.5.2.2. Monitored for fire protection.
- 2.5.2.3. Security:
- Perimeter contacts on all points of potential access.
 - Motion detectors inside building.
- 2.5.2.4. Entire security and fire protection system protected by uninterrupted power supply.
- 2.5.3. **Vault:** Vault should meet the following detailed specifications:
- 2.5.3.1. Multi-layer design of fire rated drywall, sand and concrete block to retract heat from interior of vault, or equivalent (provide details).
- 2.5.3.2. Only contractor employees allowed access to the vault. Provide detailed security plan.
- 2.5.4. **Service:** Service by Contractor shall meet the following detailed specifications:
- 2.5.4.1. Provides emergency-response access 24 hours a day, with courier service, seven (7) days a week, 365 days a year.
- 2.5.4.2. Emergency response and availability and/or delivery guaranteed within one (1) hour of initial call, 24 hours a day, 365 days a year.
- 2.5.4.3. Transport time of less than one hour from time of tape pick-ups until secured in storage vault.
- 2.5.4.4. All pick-ups and deliveries performed by Contractor’s employees only.
- 2.5.4.5. Media tapes shall only be released to pre-approved individuals designated by County.
- 2.5.4.6. Bidder shall provide information on how long they have been providing Media Storage services.
- 2.6. **Subcontractors** – If Bidder proposes a multi-vendor or subcontracted approach, the responsibilities of

MISSOURI DEPARTMENT OF NATURAL RESOURCES

GUIDELINES FOR PLANNING INFORMATION AND EDUCATION ACTIVITIES

Key Definitions

Information is the range of printed, spoken, recorded and displayed communications that may be used in public relations, marketing or education.

Education is the systematic instruction of a determined concept using the methods and theories of teaching and learning.

The distinguishing characteristic of education is *instruction*.

Information

A. Information

1. Define the problem to be solved or situation to be changed
2. Set the objective(s)
3. Determine the target audience(s)
4. Determine the message content
5. Choose the most effective instrument(s) to convey the message
6. Determine the method of evaluating the effectiveness of the instrument(s)

B. Informational instruments

1. Fact sheets
2. Technical bulletins
3. Brochures
4. News releases
5. Public service announcements
6. Paid advertisements
7. Newsletters
8. Periodicals
9. Audio-visual productions
10. Posters
11. Exhibits/displays
12. Public meetings

Common Problems with Information and Education Proposals

1. The project author is unable to distinguish information and education. Often an information- or awareness-based project is labeled an education program.
2. The project attempts to re-create something already available ("reinventing the wheel"). Do research and use or modify quality programs in existence.
3. The project objectives are missing, unclear, or unrealistic.
4. An educational project develops a instructional instrument, but does not educate a targeted audience.
5. The project is advocacy rather than education. Education efforts need to teach the learner *how to think, not what to think*.
6. Information and education plans fails to include objectives, target audiences, methods/instruments, evaluation procedures, a detailed budget and time line.

Steve Schneider
Environmental Education Specialist

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS

Any recipient employed under this agreement shall comply with the following special terms and conditions. It is understood that no recipient will receive payment unless the following conditions are complied with. These terms and conditions are in addition to all other terms and conditions contained in the financial assistance agreement.

I. PUBLIC INFORMATION GUIDELINE REQUIREMENTS:

1. The subgrantee must agree that all statements, press releases, requests for proposals, bid solicitations, and other documents describing the program/project for which funds are being awarded, will include a statement of the percentage of the total cost of the program/project which is financed with Environmental Protection Agency Region VII money, the dollar amount of Region VII funds for the program/project, and that the funds are provided through the Missouri Department of Natural Resources (DNR). On-the-ground projects must have a sign bearing this information and the names of other project partners.
2. The subgrantee must agree to coordinate all project information/education activities with the DNR Outreach and Assistance Center's Environmental Education Unit of the Environmental Assistance Office at (800) 361-4827. This coordination will include providing advance notification of project planning meetings to allow attendance and providing for review and approval of draft copies of agendas for public meetings and workshops. Failure to obtain prior approval will result in DNR disallowing reimbursement for production costs. Guidelines for planning information and education activities are attached.
3. All public information projects, including but not limited to, publications and audio-visual projects, must meet Department of Natural Resources quality standards, as outlined in the style sheet (attached) and the department's style manual. All recommendations made by a departmental review of the publications must be followed by the subgrantee. Unless otherwise specified in the Attachment A-1, Terms of Agreement, the subgrantee will provide to DNR five copies of printed materials and ten copies of videos produced. (Technical manuals and sound/slide series are excluded.)

See Attachment D, General Terms and Conditions for additional publication requirements.

II. ADMINISTRATION REQUIREMENTS:

1. **Audit Requirements.** Audits must report on fair presentation of the organizations financial statements in conformity with generally accepted accounting principles, the internal control structure, and compliance with applicable laws and regulations. The audits must be conducted in accordance with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants.

The amended Single Audit Act of 1996 (revised June 27, 2003), which applies to all non-federal entities expending \$500,000 or more in federal awards in a fiscal year, takes effect for fiscal years beginning after December 31, 2003. This statutory requirement supersedes any other effective date in federal agency guidance, so the same effective date will apply to all agencies and all recipients of federal funds.

- a. **Private For-Profit Organizations.** Recipients having federal expenditures in excess of \$500,000 in a fiscal year must provide a copy of an independent auditor's report. For audit fiscal years before December 31, 2003, an audit is required when expenditures in a fiscal year are in excess \$300,000.

- b. Universities and Non-Profit Organizations. Universities or Non-Profit recipients must submit a copy of an independent audit as prescribed in OMB circular A-133 if applicable. If circular A-133 does not apply, Universities or Non-Profit recipients having federal expenditures in excess of \$500,000 in a fiscal year must provide a copy of an independent auditor's report. For audit fiscal years before December 31, 2003, an audit is required when expenditures in a fiscal year are in excess \$300,000.
 - c. Government Organizations. Units of state or local governments must provide the department a copy of an independent auditor's report for expenditures in excess of \$500,000 in a fiscal year. For audit fiscal years before December 31, 2003, an audit is required when expenditures in a fiscal year are in excess \$300,000.
 - d. Audit waiver. Grant awards primarily for the purchase of equipment (i.e., when equipment purchases make up 80% of the total project costs) will not require an audit irrespective of the amount of the award.
 - e. Review of Expenditures Less Than \$500,000 (or \$300,000 prior to December 31, 2003):
The recipient may be asked to provide documentation of project activity, financial statements, reports of various aspects of compliance at the request of the department if their expenditures are below the \$500,000 (or \$300,000 prior to December 31, 2003) threshold in a fiscal year. On-site monitoring and reviews by the department will be conducted if necessary that focus on compliance and controls over compliance. Any findings noted during the process will be handled in the same manner as any exceptions noted under a single or program-specific audit.
 - f. Recipients of federal funds, which are reviewed by the DNR or its representative, shall address all deficiencies identified in the review to the satisfaction of the DNR. Recipients failing to address deficiencies identified in the review will not be eligible to receive any further funding, and may be required to repay any and all disbursements of federal grant funds awarded by the MDNR.
2. Bid Procedures. Bids for purchases of goods or services must be solicited whenever the total purchase is expected to cost \$3,000 or more within a year from any one vendor. For instance:
- a. if one item purchased costs \$3,000 or more;
 - b. if several items purchased on a single invoice from one vendor, such as building supplies and tools, total \$3,000 or more; or
 - c. if several purchases are made at various times within one year from the same vendor total \$3,000 or more; for instance, purchase of rock in April for \$1,000, again in July for \$1,500, and again in September for \$1,075 from the same vendor.

The \$3,000 bid limit is the limit established under the procurement requirements of the State of Missouri, Office of Administration, Purchasing Division. Therefore, the \$3,000 limit will be used for any federal funds passed through to subgrantees for purchasing purposes within federal grant projects. If federal funds are passed from the subgrantee to any other participant to spend on the project, then the participant is to follow the same guidelines. A minimum of three bids is to be solicited with at least one being of a minority business.

Minority and women business enterprises are to be solicited in the bid process whenever possible. The bidding process is mandatory for purchases reimbursed with federal grant funds as well as purchases used to meet required match commitments. Further bid procedure and purchasing guidelines are found in the appropriate OMB circulars of Administrative Requirement of Grants and Agreements under Competition and Procurement procedures.

MISSOURI DEPARTMENT OF NATURAL RESOURCES
Federal Subgrants
General Terms and Conditions

I. Administrative Requirements

These general terms and conditions highlight requirements which are especially pertinent to federal subgrants made by the Missouri Department of Natural Resources (MDNR). These general terms and conditions do not set out all of the provisions of the applicable laws and regulations, nor do they represent an exhaustive list of all requirements applicable to this award. These terms and conditions are emphasized here because they are frequently invoked and their violation is of serious concern.

In addition to these terms and conditions, the subgrantee must comply with all governing requirements of their subgrant, including the federal Common Rule (adopted by federal agencies and contained in specific Codes of Federal Regulation, for each federal agency, under the title "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments"). The Common Rule is fully incorporated by reference into these terms and conditions. The common rule as codified by the federal granting agency can be found at <http://www.whitehouse.gov/omb/grants/chart.html>

- A. Method of Payment.** The subgrantee will be reimbursed by the MDNR for all allowable expenses incurred in performing the scope of services. The subgrantee shall report project expenses and submit to the MDNR original invoices for payment as required by division/program per the subgrant agreement. The form must be completed with the MDNR invoiced amount and local share detailed. Invoices must provide a breakdown of project expenses by the budget categories contained in the subgrant budget. Invoices must be received by the MDNR per the subgrant agreement. No reimbursements will be made for expenditures incurred after the closing budget date unless a budget time period extension has been granted by the MDNR prior to the closing date.
1. Payments under non-construction grants will be based on the grant sharing ratio as applied to the total project cost for each invoice submitted unless the subgrant specifically provides for advance payments. Advance payments may only be made upon a showing of good cause or special circumstances, as determined by the MDNR. Advance payments will only be made on a monthly basis to cover estimated expenditures for a 30-day period or as otherwise agreed. The MDNR will not advance more than 25% of the total amount of the grant unless the recipient demonstrates good cause.

2. All reimbursement requests must have the following certification by the authorized subgrantee official: I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made or will be made in accordance with the subgrant and that payment is due and has not been previously requested.

B. Retention and Custodial Requirements For Records. The subgrantee shall retain financial records, supporting documents, and other records pertinent to the subgrant for a period of three years starting from the date of submission of the final financial status report. Authorized representatives of federal awarding agencies, the Comptroller General of the United States, and the MDNR shall have access to any pertinent books, documents, and records of subgrantees in order to conduct audits or examinations. The subgrantee agrees to allow monitoring and auditing by the MDNR and/or authorized representative. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the subgrantee shall retain records until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

C. Program Income.

1. Subgrantees are encouraged to earn income to defray program costs. Program income means income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under the subgrant, and from payments of principal and interest on loans made with subgrant funds. Program income does not include items such as interest on grant funds, rebates, credits, discounts, or refunds.
2. Program income shall be deducted from outlays, which may be both state and subgrantee unless the MDNR, with approval of the federal awarding agency, as negotiated with the subgrantee, specifies an alternative method in the subgrant. The default deductive alternative requires that program income be deducted from total allowable costs to determine the net amount to which the respective matching ratios are applied. For example, 50/50 share ratio subgrant with total allowable costs of \$10,000 that earns \$1,000 in program income would result in \$4,500 net share and a \$4,500 net sub-grant share.

D. Match or Cost Share Funding. In general, match or cost sharing represents that portion of project costs not borne by state appropriations. The matching share will usually be prescribed as a minimum percentage. In-kind (noncash) contributions are allowable project costs when they directly benefit and are specifically identifiable to the project or program. Any in-kind match must be assigned a fair market value stated in dollars and the rationale used to calculate the value must be provided. Neither costs nor the values of third party in-kind contributions count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another federal subgrant agreement, a federal procurement contract, or any other award of federal funds. Federal funds from another federal grant or subgrant shall not count towards satisfying a cost sharing or matching requirement of a grant agreement.

1. Match or cost share funding will be established by the MDNR through negotiation with the subgrantee. Signature by both the MDNR and subgrantee on the subgrant signature form firmly affixes the match or cost sharing ratios. Full expenditure of subgrantee match or cost share funding is required over the life of the subgrant. Subgrantee must invoice the MDNR, as required by the particular subgrant, and provide financial records for total expenditure of state and match or cost share funding. The MDNR will reimburse the subgrantee for its percentage portion agreed to less any negotiated withholding.
2. Failure to provide 100% of the match or cost share ratio of total expenditures as identified in the subgrant may cause the subgrantee to become ineligible to receive additional financial assistance from the MDNR. Failure to provide the required match may result in other enforcement remedies as stated in Y. for non-compliance.

E. Financial Management Systems. The financial management systems of subgrantees must meet the following standards:

1. **Financial Reporting.** Accurate, current, and complete disclosure of financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the subgrant;
2. **Accounting Records.** Maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income;

3. **Internal Control.** Effective control and accountability must be maintained for all subgrantee cash, real and personal property, and other assets. Subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes;
4. **Budget Control.** Actual expenditures or outlays must be compared with budgeted amounts for each subgrant;
5. **Allowable Costs.** Applicable OMB cost principles, federal agency program regulations, and the subgrant scope of work will be followed in determining the reasonableness, allowability, and allocability of costs;
6. **Source Documentation.** Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract, and subgrant award document. The documentation must be made available by the subgrantee at the MDNR's request;
7. The subgrantee shall have procedures in place to minimize the time lapsed between money disbursed by the MDNR and money spent by the subgrantee.

F. Reporting of Program Performance. Subgrantee shall submit to the MDNR a performance report for each program, function, or activity as specified by the subgrant or at least annually and/or after completion of the project. Performance report requirements, if not expressly stated in the scope of work, should include, at a minimum, a comparison of actual accomplishments to the goals established, reasons why goals were not met, including analysis and explanation of cost overruns or higher unit cost when appropriate, and other pertinent information. Representatives of the MDNR shall have the right to visit the project site(s) during reasonable hours for the duration of the contract period and for three years thereafter.

G. Budget and Scope of Work Revisions. Subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements. However, subgrantee must request approval in writing to revise budgets and scopes of work under the following conditions:

1. For non-construction grants, subgrantees shall obtain the prior approval of the MDNR, unless waived by the MDNR, for cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions or activities

when the accumulative amounts of such transfers exceed or are expected to exceed 10% of the current total approved budget whenever the MDNR's share exceeds \$100,000.

2. For construction and non-construction projects, subgrantees shall obtain prior written approval from the MDNR for any budget revision which would result in the need for additional funds.
3. For combined non-construction and construction projects, the subgrantee must obtain prior written approval from the MDNR before making any fund or budget transfer from the non-construction to construction or vice versa.
4. Subgrantees under non-construction projects must obtain prior written approval from the MDNR whenever contracting out, subgranting, or otherwise obtaining a third party to perform activities which are central to the purpose of the award.
5. Changes to the scope of services described in the subgrant must receive prior approval from the MDNR. Approved changes in the scope of work or budget shall be incorporated by written amendment to the subgrant.
6. Extending the grant past the original completion date requires approval of the MDNR.

H. **Equipment Use.** Subgrantee agrees that any equipment purchased pursuant to this agreement shall be used for the performance of services under this agreement during the term of this agreement. The equipment shall not be moved from the State of Missouri without approval from the MDNR. The following standards shall govern the utilization and disposition of equipment acquired with subgrant funds:

1. Title to equipment acquired under this subgrant will vest with the subgrantee on acquisition. Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost \$5,000 and greater.
 - a. Equipment shall be used by the subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by MDNR funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the MDNR or the federal agency. If the MDNR puts subgrantee on notice that it believes grant assets are not being used for

the intended purpose, subgrantee shall not sell, give away, move or abandon the assets without the MDNR's prior written approval.

- b. The subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the MDNR, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the MDNR. User fees should be considered if appropriate.
 - c. The subgrantee must not use equipment acquired with MDNR funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by state or federal law. This fee may be considered program income under Section C above.
 - d. When acquiring replacement equipment, the subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the MDNR.
2. **Equipment Management.** Subgrantee's procedures for managing equipment, whether acquired in whole or in part with subgrant funds, will, at a minimum, meet the following requirements until disposition takes place:
- a. Subgrantee must maintain property records that include a description of the equipment, a serial number or other identification number, the source of property, the acquisition date, cost of the property, percentage of federal or state participation in the cost of the property, and the location, use and condition of the property.
 - b. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - c. A control system must be developed to ensure adequate safeguards to prevent against loss, damage, or theft of the property. Any loss, damage, or theft shall be reported to and investigated by local authorities. The subgrantee shall procure and maintain insurance covering loss or damage to equipment purchased with a sub-grant award, with

financially sound and reputable insurance companies or through self-insurance, in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business and similarly situated.

- d. Subgrantee must develop adequate maintenance procedures to keep the property in good condition.
- e. If the subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

3. **Disposition.** When original or replacement equipment acquired under a subgrant is no longer needed for the original project or program or for other activities currently or previously supported by the MDNR, subgrantee shall dispose of the equipment as follows:

- a. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the MDNR.
- b. For items of equipment with a current per unit fair market value of \$5,000 or more, the MDNR shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the MDNR's share of the equipment.
- c. In cases where a subgrantee fails to take appropriate disposition actions, the MDNR may direct the subgrantee how to dispose of the equipment.
- d. If the MDNR puts subgrantee on notice that it believes grant assets are not being used for the intended purpose, subgrantee shall not sell, give away, move or abandon the asset without MDNR's written approval.

I. **Supplies.** Title to supplies acquired under a subgrant will vest, upon acquisitions, in the subgrantee.

If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the subgrantee shall compensate the department for its share.

- J. **Inventions and Patents.** If any subgrantee produces subject matter, which is or may be patentable in the course of work sponsored by this subgrant, subgrantee shall promptly and fully disclose such subject matter in writing to the MDNR. In the event that the subgrantee fails or declines to file Letters of Patent or to recognize patentable subject matter, the MDNR reserves the right to file the same. The MDNR grants to the subgrantee the opportunity to acquire an exclusive license, including the right to sublicense, with a royalty consideration paid to the MDNR. Payment of royalties by subgrantee to the MDNR will be addressed in a separate royalty agreement.
- K. **Copyrights.** Except as otherwise provided in the terms and conditions of this subgrant, the author or the subgrantee is free to copyright any books, publications, or other copyrightable material developed in the course of this subgrant; however, the MDNR and federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, with the approval of MDNR, the work for government purposes.
- L. **Prior Approval For Publications.** The subgrantee shall submit to the MDNR two draft copies of each publication and other printed materials which are intended for distribution and are financed, wholly or in part, by subgrant funds. The subgrantee shall not print or distribute any publication until receiving written approval by the grant manager.
- M. **Mandatory Disclosures.** Subgrantee agrees that all statements, press releases, requests for proposals, bid solicitations, and other documents describing the program/project for which funds are now being awarded will include a statement of the percentage of the total cost of the program/project which is financed with federal and state money, and the dollar amount of federal and state funds for the program/project.
- N. **Procurement Standards.** Subgrantees shall use their own procurement procedures provided that procurement conforms to standards set forth in the "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments."
1. No work or services, paid for wholly or in part with state or federal funds, will be contracted without the written consent of the MDNR. See G.4.
 2. Subgrantee agrees that any contract, interagency agreement, or equipment to be procured under this award which was not included in the approved workplan must receive formal MDNR approval prior to expenditure of funds associated with that contract, interagency agreement, or equipment purchase.

- O. **Audit Requirements.** The MDNR has the right to conduct audits of recipients at any time. The subgrantee shall arrange for independent audits as prescribed in OMB Circular A-133, Single Audit Act Amendments of 1996, as applicable. Audits must confirm that records accurately reflect the operations of the subgrantee, the internal control structure provides reasonable assurance that assets are safeguarded, and subgrantee is in compliance with applicable laws and regulations. When the subgrantee has its yearly audit conducted by a governmental agency or private auditing firm, the relevant portion(s) of the audit report will be submitted to the MDNR. Other portions of the audit shall be made available at the MDNR's request.
- P. **Allowability of Costs.** Allowability of costs shall be determined in accordance with cost principles contained in OMB Circular No. A-87 for state and local governments, and Circular No. A-122 for nonprofit organizations.
- Q. **Conflicts of Interest.** No party to this subgrant, nor any officer, agent, or employee of either party to this subgrant, shall participate in any decision related to such subgrant which could result in a real or apparent conflict of interest, including any decision which would affect their personal or pecuniary interest, directly or indirectly.

The subgrantee is advised that, consistent with Chapter 105, RSMo, no state employee shall perform any service for consideration paid by the subgrantee for one year after termination of the employee's state employment by which the former state employee attempts to influence a decision of a state agency. A state employee who leaves state employment is permanently banned from performing any service for any consideration in relation to any case, decision, proceeding, or application in which the employee personally participated during state employment.

- R. **State Appropriated Funding.** The subgrantee agrees that funds expended for the purposes of this subgrant must be appropriated and made available by the Missouri General Assembly for each fiscal year included within the subgrant period, as well as being awarded by the federal or state agency supporting the project. Therefore, the subgrant shall automatically terminate without penalty or termination costs if such funds are not appropriated and/or granted. In the event that funds are not appropriated and/or granted for the subgrant, the subgrantee shall not prohibit or otherwise limit the MDNR's right to pursue alternate solutions and remedies as deemed necessary for the conduct of state government affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the subgrant.

- S. **Eligibility, Debarment and Suspension.** By applying for this award, the subgrantee verifies that it, its board of directors, and all of its principals are currently in compliance with all state and federal environmental laws and court orders issued pursuant to those laws, and that all environmental violations have been resolved (for example, no pending or unresolved Notices of Violation (NOV)) at the time of application. If compliance issues exist, subgrantee shall disclose to the MDNR all pending or unresolved violations noted in an NOV, administrative order, or civil and criminal lawsuit, but only where those alleged violations occurred in the past two years in the State of Missouri. The MDNR will not make any award at any time to any party which is debarred or suspended, under federal or state authority, or is otherwise excluded from or ineligible for participation in federal assistance under Executive Order 12549, "Debarment and Suspension." Subgrantee shall complete a Debarment/Suspension form when required by the MDNR. Furthermore, subgrantee is also responsible for written debarment/suspension certification of all subcontractors receiving funding through a federally funded grant.
- T. **Restrictions on Lobbying.** No portion of this award may be expended by the recipient to pay any person for influencing or attempting to influence the executive or legislative branch with respect to the following actions: awarding of a contract; making of a grant; making of a loan; entering into a cooperative agreement; or the extension, continuation, renewal, amendment or modification of any of these as prohibited by Section 319, Public Law 101-121 (31 U.S.C. 1352).
- U. **Recycled Paper.** Consistent with Federal Executive Order 13101, the subgrantee shall use recycled paper consisting of at least 30% post consumer fiber for all reports which are prepared as a part of this grant award and delivered to the MDNR. The subgrantee must use recycled paper for any materials that it produces and makes available to any parties. The chasing arrows symbol representing the recycled content of the paper will be clearly displayed on at least one page of any materials provided to any parties.
- V. **Contracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms.** In accordance with Missouri Executive Order No. 98-21 and federal administrative provisions, all subgrantees shall make special efforts to assure that a Fair Share Objective of 10% be made available to minority business firms, including historically black colleges and universities, and 5% be made available to women business enterprise firms, when utilizing subgrant funds to purchase supplies, equipment, construction and services related to this subgrant.

1. The subgrantee agrees to take all necessary affirmative steps required to assure that small and minority firms, women's business enterprises and labor surplus area firms are used when possible as sources when procuring supplies, equipment, construction and services related to the subgrant. The subgrantee agrees to include information about these requirements in solicitation documents. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Ensuring that small and minority and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women's business enterprises;
 - d. Establishing delivery schedules, where the requirements of work will permit participation by small and minority and women's business enterprises;
 - e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, and;
 - f. Requiring any prime contractor or other subgrantee, if subgrants are to be allowed, to take the affirmative steps in subparagraphs a. through e. of this section.
2. For EPA subgrants, the subgrantee agrees to submit to the MDNR grants manager a completed Form 5700-52A, U. S. Environmental Protection Agency MBE/WBE Utilization Under Federal Grants, Cooperative Agreement, and Interagency Agreements within 30 days after the end of each federal/state fiscal year or as determined by the MDNR.

W. Disputes. Subgrantee and the MDNR should attempt to resolve disagreements concerning the administration or performance of the subgrant. If an agreement cannot be reached, the MDNR program director will provide a written decision. Such decision of the program director shall be final unless a request for review is submitted to the division director within ten (10) business days after the program director's decision. Such request shall include: (1) a copy of the program director's final decision; (2) a statement of the amount in dispute; (3) a brief

description of the issue(s) involved; and (4) a concise statement of the objections to the final decision. A decision by the division director shall constitute final MDNR action.

X. Termination

1. Termination for Cause. The MDNR may terminate any subgrant, in whole or in part, at any time before the date of completion whenever it is determined that the subgrantee has failed to comply with the terms and conditions of the subgrant. The MDNR shall promptly notify the subgrantee in writing of such a determination and the reasons for the termination, together with the effective date. The MDNR reserves the right to withhold all or a portion of grant funds if the subgrantee violates any term or condition of this subgrant.
2. Termination for Convenience. Both the MDNR and subgrantee may terminate the subgrant, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds.
3. This agreement is not transferable to any person or entity.

Y. Enforcement; Remedies for Noncompliance. If a subgrantee falsifies any award document or materially fails to comply with any term of a grant, award, or subgrant, the MDNR may take one or more of the following actions, as appropriate:

1. Suspend or terminate, in whole or part, the current award or grant;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Temporarily withhold cash payments pending subgrantee's correction of the deficiency;
4. Withhold further awards from the subgrantee;
5. Order subgrantee not to transfer ownership of assets purchased with grant money without prior MDNR approval; or
6. Take other remedies that may be legally available, including cost recovery, breach of contract, and suspension or debarment.

- Z. **Subgrantee's Signature.** The subgrantee's signature on the application and the award documents signifies the subgrantee's agreement to all of the terms and conditions of the award.

II. **Statutory Requirements**

Subgrantees must comply with all federal state and local laws relating to employment, construction, research, environmental compliance, and other activities associated with grants from the MDNR. Failure to abide by these laws is sufficient grounds to cancel the award. For a copy of state and federal laws that typically apply to grants from the MDNR, contact the MDNR grants manager.

Any subgrantee, in connection with its application for financial assistance, shall include a certification that the subgrantee, its board of directors and principals are in compliance with the specific federal and state laws set out below. Further, the subgrantee shall report to the MDNR any instance in which the subgrantee or any member of its board of directors or principals is determined by any administrative agency or by any court in connection with any judicial proceeding to be in noncompliance with any of the specific federal or state laws set forth below. Such report shall be submitted within ten (10) working days following such determination. Failure to comply with the reporting requirement may be grounds for termination of this subgrant or suspension or debarment of the subgrantee

A. **Laws and regulations related to nondiscrimination:**

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;
2. Title VII of the Civil Rights Act of 1964 found at 42 U.S.C. § 2000(e) et seq. which prohibits discrimination on the basis of race, color, religion, national origin, or sex;
3. Title IX of the Education Amendments of 1972, as amended (U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability;
5. Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 621-634), which prohibits discrimination on the basis of age;

6. Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
7. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
8. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
9. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
10. Chapter 213 of the Missouri Revised Statutes which prohibits discrimination on the basis of race, color, religion, national origin, sex, age, and disability.
11. The Americans with Disabilities Act (P. L. 101-336), 42 U.S.C. § 12101 et seq., relating to nondiscrimination with respect to employment, public services, public accommodations and telecommunications.
12. Any other nondiscrimination provisions in the specific statute(s) and regulations under which application for federal assistance is being made.
13. The requirements of any other nondiscrimination statute(s) and regulations which may apply to the application.

B. State and Federal Environmental Laws:

1. The Federal Clean Air Act, 42 U.S.C. § 7606, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
2. The Federal Water Pollution Control Act, 33 U.S.C. § 1368, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
3. The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., as amended, particularly as it relates to the assessment of the environmental impact of federally assisted projects.

4. The National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq., as amended, relating to the preservation of historic landmarks.
 5. Earthquakes - Seismic Building and Construction Ordinances, §§ 319.200 - 319.207, RSMo (Cum. Supp. 1990), relating to the adoption of seismic design and construction ordinances by certain cities, towns, villages and counties.
 6. The Missouri Clean Water Law, Sections 644.006 to 644.141, RSMo.
 7. The Missouri Hazardous Waste Management Law, Section, 260.350 to 260.430, RSMo.
 8. The Missouri Solid Waste Management Law, Sections 260.200 to 260.245, RSMo.
 9. The Missouri Air Conservation Law, Sections 643.101 to 643.190, RSMo.
- C. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 and 4651 et seq., relating to acquisition of interest in real property or any displacement of persons, businesses, or farm operations.
- D. The Hatch Act, 5 U.S.C. § 1501 et seq., as amended, relating to certain political activities of certain State and local employees.
- E. The Archaeological and Historic Preservation Act of 1974 (Public Law 93-291) relating to potential loss or destruction of significant scientific, historical, or archaeological data in connection with federally assisted activities.
- F. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- G. The flood insurance purchase requirements of § 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) which requires Subgrantees in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- H. The Privacy Act of 1974, P.L. 93-579, as amended prohibiting the maintenance of information about any individual in a manner which would violate the provision of the Act.
- I. Public Law 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
- J. The Laboratory Animal Welfare Act of 1966 (P. L. 89-544), 7 U.S.C. § 2131 et seq., pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- K. The following additional requirements apply to projects that involve construction:
 - 1. The Davis-Bacon Act, as amended, 40 U.S.C. § 276a et seq., respecting wage rates for federally assisted construction contracts in excess of \$2000.
 - 2. The Copeland (Anti-Kickback) Act, 18 U.S.C. § 874, 40 U.S.C. § 276c.
 - 3. The Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 et seq.
 - 4. Convict labor shall not be used on construction projects unless by convicts who are on work release, parole, or probation.
 - 5. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.) which prohibits the use of lead paint in construction or rehabilitation of residence structures.



EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the attached regulation.

Where To Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

How To Obtain Forms:

EPA includes the certification form, instructions, and a copy of its implementing regulation (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Compliance Branch
Grants Administration Division (PM-216F)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460
(Telephone: 202/475-8025)

federal register

**Thursday
May 26, 1988**

Part VII

Environmental Protection Agency

40 CFR Part 32

**Debarment and Suspension Under EPA
Assistance, Loan and Benefit Programs**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 32****[FRL-3350-8]**

FOR FURTHER INFORMATION CONTACT:
Robert Meunier or David Sims, at (202)
475-8025.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 26, 1987, the Office of Management and Budget (OMB), issued Governmentwide guidelines governing debarment and suspension by Executive Branch agencies under nonprocurement programs. On October 20, 1987, many agencies joined in proposing a common rule to implement the guidelines. The Environmental Protection Agency (EPA) also published its proposed rule at that time, but not as part of the common rule (52 FR 3915-). Since then, OMB has amended the guidelines and determined that all agencies will join the common rule in order to ensure greater uniformity. Comments on EPA's proposed rule were considered in preparing a final common rule and are addressed in the common preamble.

EPA is adopting several additions to the common rule. Under the common rule, agencies have the option to insert additional agency-specific examples to the definitions. The definitions of "debarred official" and "suspending official" under the common rule are being amended by adding subparagraphs (g)(3) and (t)(3) to § 32.105 to designate the Director, Grants Administration Division, as the Agency's debarred and suspending official. In addition, EPA is amending the definition of "Principal" at § 32.105(p) by adding bid and proposal estimators and preparers as an agency-specific example.

Sections 32.110(a)(2)(iv) and 32.200(c)(5) of the final common rule exempt transactions pursuant to national or agency-recognized emergencies or disasters from the effect of a suspension or debarment. This exemption does not apply to transactions under any programs carried out by EPA. Accordingly, § 32.110(a)(2)(iv)(A) and § 32.200(c)(5)(i) are added to clarify these exemptions. In special cases, EPA is authorized to permit a debarred, suspended or voluntarily excluded person to participate in a particular covered transaction by granting an exception under § 32.215.

EPA is adding subparagraph (d) to § 32.115 stating that while Part 32 does not apply to direct Federal procurement activities, which are governed by the

Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4, it is EPA's policy, for purposes of rational and efficient management, to integrate its administration of these two complementary programs.

One commenter sought clarification about whether a person could be debarred or suspended for violating environmental laws. An environmental violation could give rise to a debarment or suspension action under several of the causes at § 32.305, where there is a reasonable connection between the offense committed and future performance under an EPA assistance program. For example, a conviction of civil judgment for falsely certifying hazardous waste disposal manifests could result in debarment under § 32.305(a)(3). The unauthorized disposal of hazardous wastes, such as through "midnight dumping", could result in debarment under § 32.305(a)(4) or (d). Failure to comply with environmental requirements incorporated into a public contract could result in debarment under § 32.305(b).

The common rule requires a hearing only where there exists a genuine dispute as to facts material to a proposed debarment or suspension. EPA is adding language to §§ 32.313 and 32.412, permitting a respondent to request a hearing regardless of whether there are "material facts" in dispute. This reflects EPA's policy and current practice of affording all respondents the same procedural options for the resolution of pertinent issues. A request for hearing upon suspension, however, is still subject to denial under § 32.412(b)(1)(ii), where pending or contemplated legal proceedings would be prejudiced.

Also, the common rule makes no provision for post-determination review of debarment or suspension decisions. EPA is opting to retain its current post-determination review procedures by adding §§ 32.330 and 32.425, which permit a party to request the debarred/suspending official to reconsider a decision to debar or suspend due to an error of fact or law. EPA is also adding §§ 32.335 and 32.430, which permit discretionary review of debarment and suspension decisions by the Director of EPA's Office of Administration, upon a written appeal filed within 30 calendar days of receipt of the debarred or suspending official's determination. We note that several comments to the proposed common rule recommended that an administrative review process be provided.

The common rule states generally that the "Agency" is authorized to settle debarment and suspension actions. At

EPA this authority is vested in the Director, Grants Administration Division, as the debarred and suspending official. Accordingly, EPA is adding subparagraph (1) to § 32.315(a) to reflect this responsibility.

The proposed common rule contained a certification requirement which encompassed a range of important information from which to determine the current eligibility or potential responsibility of the prospective participant. In the final common rule, there are separate certifications, one for primary covered transactions (e.g., assistance recipients) and one for lower-tier covered transactions (e.g., contractors, subcontractors, suppliers). The lower-tier certification is an abbreviated version of the primary-tier certification.

Because EPA is most vulnerable to waste, fraud or abuse at the lower-tier level, EPA is expanding the certification for lower-tier participants by requiring them to certify to much of the same information provided in the certification submitted by primary participants. Accordingly, paragraph (3) and subparagraphs (a) (b) and (c) are being added to the lower-tier certification form.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Assistance programs—environmental protection, Technical assistance.

Lee M. Thomas,
Administrator.

Dated: May 11, 1988.

Title 40 of the Code of Federal Regulations is amended as set forth below.

1. Part 32 is revised to read as set forth at the end of this document:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**Subpart A—General**

Sec.
32.100 Purpose.
32.105 Definitions.
32.110 Coverage.
32.115 Policy.

Subpart B—Effect of Action

32.200 Debarment or suspension.
32.205 Ineligible persons.
32.210 Voluntary exclusion.
32.215 Exception provision.
32.220 Continuation of covered transactions.
32.225 Failure to adhere to restrictions.

Subpart C—Debarment

32.300 General.
32.305 Causes for debarment.

- 32.310 Procedures.
- 32.311 Investigation and referral.
- 32.312 Notice of proposed debarment.
- 32.313 Opportunity to contest proposed debarment.
- 32.314 Debarring official's decision.
- 32.315 Settlement and voluntary exclusion.
- 32.320 Period of debarment.
- 32.325 Scope of debarment
- 32.330 Reconsideration.
- 32.335 Appeal.

Subpart D—Suspension

- 32.400 General.
- 32.405 Causes for suspension.
- 32.410 Procedures.
- 32.411 Notice of suspension.
- 32.412 Opportunity to contest suspension.
- 32.413 Suspending official's decision.
- 32.415 Period of suspension.
- 32.420 Scope of suspension.
- 32.425 Reconsideration.
- 32.430 Appeal.

Subpart E—Responsibilities of GSA, Agency and Participants

- 32.500 GSA responsibilities.
- 32.505 EPA responsibilities.
- 32.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transaction

Authority: Executive Order 12549; 7 U.S.C. 136 et seq.; 15 U.S.C. 2091 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 8801 et seq.

Subpart A—General

§ 32.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

- (1) Prescribing the programs and activities that are covered by the governmentwide system;
- (2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 32.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 32.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

(3) The Director, Grants Administration Division, is the authorized debarring official.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement

programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on

behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person*. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence*. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal*. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) Bid and proposal estimators and preparers.

(q) *Proposal*. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent*. A person against whom a debarment or suspension action has been initiated.

(s) *State*. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official*. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The Director, Grants Administration Division, is the authorized suspending official.

(u) *Suspension*. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded*. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *EPA*. Environmental Protection Agency.

(x) *Agency Head*. Administrator of the Environmental Protection Agency.

§ 32.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction*. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction*. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction*. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold

fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Provider of federal'-required audit services.

(2) *Exceptions*. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(A) For the purpose of this paragraph, no transactions under EPA assistance programs are deemed to be pursuant to agency-recognized emergencies or disasters.

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections*.

This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 32.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 32.110(a). Sections 32.325, "Scope of debarment," and 32.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of

a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 32.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) While Part 32 does not apply to direct Federal procurement activities, which are governed by the Federal Acquisition Regulations (FAR) at 48 CFR Subpart 9.4, it is EPA's policy to integrate its administration of these two complementary debarment and suspension programs.

Subpart B—Effect of Action

§ 32.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 32.215.

(b) *Losier tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 32.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters:

(i) For the purposes of this paragraph, no transactions under EPA assistance programs are deemed agency-recognized emergencies or disasters.

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 32.205 Ineligible persons.

Persons who are ineligible, as defined in § 32.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 32.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 32.315 are excluded in accordance with the terms of their settlements. EPA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 32.215 Exception provision.

EPA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to

participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 32.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 32.505(a).

(a) The Director, Grants Administration Division, is the official authorized to grant exceptions.

§ 32.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 32.215.

§ 32.225 Failure to adhere to restrictions.

Except as permitted under § 32.215 or § 32.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment**§ 32.300 General.**

The debarring official may debar a person for any of the causes in § 32.305, using procedures established in §§ 32.310 through 32.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 32.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 32.300 through 32.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 32.215 or § 32.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 32.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 32.310 Procedures.

EPA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 32.311 through 32.314.

§ 32.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 32.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 32.305 for proposing debarment;

(d) Of the provisions of § 32.311 through § 32.314, and any other EPA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 32.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) If the respondent desires a hearing, it shall submit a written request to the debarring official within the 30-day period following receipt of the notice of proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 32.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.*

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 32.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 32.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, EPA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

(1) The debarring and suspending official is the official authorized to settle debarment or suspension actions.

§ 32.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 32.311 through 32.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a

request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or civil judgment upon which the debarment was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the debarment was imposed; or
- (5) Other reasons the debarring official deems appropriate.

§ 32.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 32.311 through 32.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to

other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§ 32.330 Reconsideration.

Any party to the action may petition the debarring official to reconsider a debarment determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the determination.

§ 32.335 Appeal.

(a) The debarment determination under § 32.314 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the debarring official by filing a request with the OA Director within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the debarring official may stay the effective date of a debarment order pending resolution of the appeal. If a debarment is stayed, the stay shall be automatically lifted if the OA Director affirms the debarment.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, and abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.314 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31 or 33 of this subchapter.

Subpart D—Suspension**§ 32.400 General.**

(a) The suspending official may suspend a person for any of the causes in § 32.405 using procedures established in §§ 32.410 through 32.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 32.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 32.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 32.400 through 32.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 32.305(a); or

(2) That a cause for debarment under § 32.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 32.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* EPA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§ 32.411 through § 32.413.

§ 32.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 32.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 32.411 through § 32.413 and any other EPA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 32.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) If the respondent desires a hearing, it shall submit a written request to the suspending official within the 30-day period following receipt of the notice of suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 32.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 32.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force.

However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 32.416 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a

suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 32.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 32.325), except that the procedures of §§ 32.410 through 32.413 shall be used in imposing a suspension.

§ 32.425 Reconsideration.

Any party to the action may petition the suspending official to reconsider a suspension determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the suspension determination.

§ 32.430 Appeal.

(a) The suspension determination under § 32.413 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the suspending official by filing a request with the OA Director within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the suspending official may stay the effective date of a suspension order pending resolution of appeal. If a suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the suspension.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.413 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31, or 33 of this subchapter.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 32.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall include:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 32.505 EPA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which EPA has granted exceptions under § 32.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 32.500(b) and of the exceptions granted under § 32.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal

or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 32.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to EPA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(3) The prospective lower-tier participant also certifies that it and its principals:

(a) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(b) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (3)(a) of this certification; and

(c) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default. Where the prospective lower-tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

DNR/Water Protection Program
Simplified Version of
Instructions for Completing the MBE/WBE Form for Subgrantees (5700-52A)
(Minority Business Enterprise/Women Business Enterprise)

- 1A. **Federal Fiscal Year** is the federal year you are reporting the current quarter or annual data for. (For instance, if the report is for Jul-Sept 1997 the fiscal year would be FY97 since the federal fiscal year runs October through September. October 1997 through September 1998 would be FY98 and so on).
- 1B. **Reporting Quarter** is the quarter you are reporting on or check annual if you report once per year, which is allowable and acceptable for 604b and 319 grant projects. (104b projects must report quarterly).
- 1C. **Revision** is for if you need to revise a prior report already submitted. Send copy of the previous report that is needing corrected highlighting the item and explain the correction in Block No. 6 and attach to a new revised form 5700-52A.
- 2A. **Federal Financial Assistance Agency** - insert Missouri Department of Natural Resources, PO Box 176, Jefferson City, MO 65102.
- 2B. **Reporting Contact** is the DNR WPCP project manager
- 2C. **Phone:** DNR project manager's phone number.
- 3A. **Reporting Recipient** is the agency the subgrant was awarded.
- 3B. **Reporting Contact** is the recipient contact person (project manager)
- 3C. **Phone:** Recipient Project Manager phone number.
- 4A. **Financial Assistance Agreement ID Number** is the number assigned the subgrant, which can be found on the Subgrant Assistance Agreement page, block #2 or on the Minigrant Assistance Agreement page, under Minigrant Number.
- 4B. **Federal Financial Assistance Program** is the type of grant funds awarded for the project and year if known (for example: FY93-319 grant, FY96-604b grant, 104b grant, etc.) You can locate this information on the Assistance Agreement documents under Source of Funding/Yr.
- 5A. **Total Assistance Agreement Amount for EPA share** - is the total in block #11 of the Assistance Award Agreement under Initial Award or Amended Award whichever is the current award amount and for Minigrants it is under section Project Funding: Award. **Recipient share** - is the Initial Recipient Match or Amended Recipient match in block #11, whichever is current and on Minigrants it is the line for Recipient Match.
- 5B. **Self-explanatory.**
- 5C. **Total Procurement Amount This Reporting Period** is actual dollars spent in the reporting period by the recipient.
- 5D. **Actual MBE/WBE Procurement Accomplished This Reporting Period** is the actual dollars spent for a MBE or a WBE in the listed categories by the recipient. This does not include salary, fringe or indirect of recipients award budget. Some Travel and Other expense may fit under Services.
- 5E. **Actual MBE/WBE Procurement Accomplished This Reporting Period** is the actual dollars spent for a MBE or a WBE in the listed categories by a subcontractor or prime contractor of a recipient. This does not include salary, fringe or indirect of recipients award budget. Some Travel and Other expense may fit under Services.

6. **Additional Comments or Explanations** are self-explanatory. No explanation necessary if MBE/WBE participation is zero.
7. **Name of Authorized Representative** is authority figure who signed the federal assistance award agreement.
8. **Signature of Authorized Representative** is authority figure who signed the federal assistance award agreement.

Part II.

Recipient is the subgrantee and **Other** is anyone the recipient has subcontracted with.

The rest of the Part II form should be self-explanatory.

If you have any questions in regard to completing this form, please contact the DNR project manager.

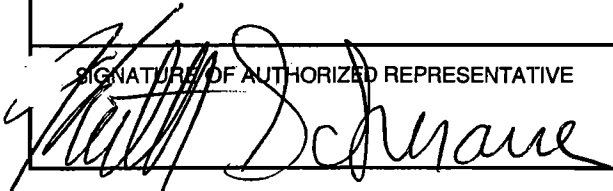
MBE/WBE certified vendors can be looked up at Website: <http://www.SBA.gov>

Vendors can also register as a MBE or WBE at this site.

Another helpful site is on the Missouri State Website: <http://www.oa.mo.gov/purch/vendor.html> then go to MBE/WBE Information under Quick Links

**U.S. ENVIRONMENTAL PROTECTION AGENCY
 MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE
 AGREEMENTS, AND INTERAGENCY AGREEMENTS**

PART 1. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR 200_____	1B. REPORTING QUARTER (Check appropriate box) <input type="checkbox"/> 1 st (Oct-Dec) <input type="checkbox"/> 2 nd (Jan-Mar) <input type="checkbox"/> 3 rd (Apr-Jun) <input type="checkbox"/> 4 th (Jul-Sep) <input type="checkbox"/> Annual																																						
1C. REVISION Year: _____ Quarter: _____	HIGHLIGHT ITEMS TO BE REVISED AND PROVIDE EXPLANATION IN BLOCK No. 6																																						
2A. FEDERAL FINANCIAL ASSISTANCE AGENCY (EPA Office Address - ATTN: DBE Coordinator)		3A. REPORTING RECIPIENT (Name and Address)																																					
2B. REPORTING CONTACT (EPA DBE Coordinator)	2C. PHONE:	3B. REPORTING CONTACT (Recipient)	3C. PHONE:																																				
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER (SRF State Recipients, Refer to Instructions for Completion of 4A, 5A, and 5C)		4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM																																					
5A. TOTAL ASSISTANCE AGREEMENT AMOUNT EPA Share: \$ _____ Recipient Share: \$ _____	5B. Check and skip to Block No. 7 if no procurements and accomplishments were made this reporting period. <input type="checkbox"/>	5C. TOTAL PROCUREMENT AMOUNT THIS REPORTING PERIOD (ONLY include the amount not in any prior reporting period and procurements made by SRF Loan Recipients and Sub-Recipients) \$ _____ (Exclude procurement amounts reported by Prime Contractors)																																					
5D. ACTUAL MBE/WBE PROCUREMENT ACCOMPLISHED THIS REPORTING PERIOD BY RECIPIENT (SRF State Recipients, Report State Procurement Activities Here)		5E. ACTUAL MBE/WBE PROCUREMENT ACCOMPLISHED THIS REPORTING PERIOD BY LOAN RECIPIENTS, SUB-RECIPIENTS, AND PRIME CONTRACTORS																																					
<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:15%;"></th> <th style="width:15%; text-align: center;">\$ MBE</th> <th style="width:15%; text-align: center;">\$ WBE</th> </tr> </thead> <tbody> <tr><td>Construction</td><td>_____</td><td>_____</td></tr> <tr><td>Equipment</td><td>_____</td><td>_____</td></tr> <tr><td>Services</td><td>_____</td><td>_____</td></tr> <tr><td>Supplies</td><td>_____</td><td>_____</td></tr> <tr><td>TOTAL</td><td>_____</td><td>_____</td></tr> </tbody> </table>		\$ MBE	\$ WBE	Construction	_____	_____	Equipment	_____	_____	Services	_____	_____	Supplies	_____	_____	TOTAL	_____	_____	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:15%;"></th> <th style="width:15%; text-align: center;">\$ MBE</th> <th style="width:15%; text-align: center;">\$ WBE</th> </tr> </thead> <tbody> <tr><td>Construction</td><td>_____</td><td>_____</td></tr> <tr><td>Equipment</td><td>_____</td><td>_____</td></tr> <tr><td>Services</td><td>_____</td><td>_____</td></tr> <tr><td>Supplies</td><td>_____</td><td>_____</td></tr> <tr><td>TOTAL</td><td>_____</td><td>_____</td></tr> </tbody> </table>		\$ MBE	\$ WBE	Construction	_____	_____	Equipment	_____	_____	Services	_____	_____	Supplies	_____	_____	TOTAL	_____	_____		
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TOTAL	_____	_____																																					
6. COMMENTS: _____ _____																																							
7. NAME OF AUTHORIZED REPRESENTATIVE		TITLE																																					
SIGNATURE OF AUTHORIZED REPRESENTATIVE 		DATE																																					

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD
EPA Financial Assistance Agreement Number: _____

1. Procurement Made By		2. Business Enterprise		3. \$ Value of Procurement	4. Date of Award MM/DD/YY	5. Type of Product or Services ^A (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Other	Minority	Women				

Type of product or service codes:

1 = Construction

2 = Supplies

3 = Services
 A = Business Services
 B = Professional Services
 C = Repair Services
 D = Personal Services

4 = Equipment

3a-c. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.

4a. Assistance Agreements or Interagency Agreement number assigned by EPA. A separate form must be used for each Assistance Agreement or Interagency Agreement.

***For SRF recipients:** In box 4a list numbers for ALL open Assistance Agreements. SRF recipients will report activity for all Agreements on one form.

4b. Refer back to Assistance Agreement document for this information.

5a. Total amount of Assistance Agreement which includes Federal funds plus recipient matching funds and funds from other sources.

***For SRF recipients only:** SRF recipients will not enter an amount in 5a. Please leave 5a blank.

5b. Self-explanatory.

5c. Total contracts/procurements awarded this quarter. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/ procurement centers).

***For SRF recipients only:** In 5c please enter the total procurement amount for the quarter under all of your SRF Assistance Agreements. The figure reported in this section is **not** directly tied to an individual Assistance Agreement identification number.

5d. Dollar amount of all MBE/WBE procurement amounts awarded under this reporting period by the recipient. **(These amounts include the Federal, State and local shares in the procurement awards). (SRF state recipient report state procurements in this section.)**

5e. Dollar amount of all MBE/WBE procurement amounts awarded under this reporting period by the loan recipients, sub-recipients, and prime contractors.

6. Additional comments or explanations. Please refer to specific item number(s) if appropriate.

7. Name and title of official administrator or designated reporting official.

8. Signature and month, day year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. **Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.**

2. Check MBE or WBE.

3. Dollar value of procurement.

4. Date of award, shown as month, day, year. Date of award is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award.

5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (eg., enter 1 if construction, 2 if supplies, etc).

6. Name, address, and telephone number of MBE/WBE firm.

This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30 and 31); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

ANTI-LOBBYING ACT OF 1990

IMPORTANT NOTE

The attached Anti-Lobbying Certification must be completed and returned if you are requesting \$100,000 or more in federal funds.

(Please note: This page does not need to be returned if completing the Anti-Lobbying Certification)



EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Keith Schumaker

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

Subpart C—Debarment**§ 32.300 General.**

The debarring official may debar a person for any of the causes in § 32.305, using procedures established in §§ 32.310 through 32.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 32.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 32.300 through 32.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 32.215 or § 32.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 32.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 32.310 Procedures.

EPA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 32.311 through 32.314.

§ 32.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 32.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 32.305 for proposing debarment;

(d) Of the provisions of § 32.311 through § 32.314, and any other EPA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 32.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) If the respondent desires a hearing, it shall submit a written request to the debarring official within the 30-day period following receipt of the notice of proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 32.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the attached regulation.

Where To Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

How To Obtain Forms:

EPA includes the certification form, instructions, and a copy of its implementing regulation (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Compliance Branch
Grants Administration Division (PM-216F)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460
(Telephone: 202/475-8025)

federal register

**Thursday
May 26, 1988**

Part VII

Environmental Protection Agency

40 CFR Part 32

**Debarment and Suspension Under EPA
Assistance, Loan and Benefit Programs**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 32**

[FRL-3350-8]

FOR FURTHER INFORMATION CONTACT: Robert Meunier or David Sims, at (202) 475-8025.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 28, 1987, the Office of Management and Budget (OMB), issued Governmentwide guidelines governing debarment and suspension by Executive Branch agencies under nonprocurement programs. On October 20, 1987, many agencies joined in proposing a common rule to implement the guidelines. The Environmental Protection Agency (EPA) also published its proposed rule at that time, but not as part of the common rule (52 FR 3011-). Since then, OMB has amended the guidelines and determined that all agencies will join the common rule in order to ensure greater uniformity. Comments on EPA's proposed rule were considered in preparing a final common rule and are addressed in the common preamble.

EPA is adopting several additions to the common rule. Under the common rule, agencies have the option to insert additional agency-specific examples to the definitions. The definitions of "debarred official" and "suspending official" under the common rule are being amended by adding subparagraphs (g)(3) and (t)(3) to § 32.105 to designate the Director, Grants Administration Division, as the Agency's debarred and suspending official. In addition, EPA is amending the definition of "Principal" at § 32.105(p) by adding bid and proposal estimators and preparers as an agency-specific example.

Sections 32.110(a)(2)(iv) and 32.200(c)(5) of the final common rule exempt transactions pursuant to national or agency-recognized emergencies or disasters from the effect of a suspension or debarment. This exemption does not apply to transactions under any programs carried out by EPA. Accordingly, § 32.110(a)(2)(iv)(A) and § 32.200(c)(5)(i) are added to clarify these exemptions. In special cases, EPA is authorized to permit a debarred, suspended or voluntarily excluded person to participate in a particular covered transaction by granting an exception under § 32.215.

EPA is adding subparagraph (d) to § 32.115 stating that while Part 32 does not apply to direct Federal procurement activities, which are governed by the

Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4, it is EPA's policy, for purposes of rational and efficient management, to integrate its administration of these two complementary programs.

One commenter sought clarification about whether a person could be debarred or suspended for violating environmental laws. An environmental violation could give rise to a debarment or suspension action under several of the causes at § 32.305, where there is a reasonable connection between the offense committed and future performance under an EPA assistance program. For example, a conviction of civil judgment for falsely certifying hazardous waste disposal manifests could result in debarment under § 32.305(a)(3). The unauthorized disposal of hazardous wastes, such as through "midnight dumping", could result in debarment under § 32.305 (a)(4) or (d). Failure to comply with environmental requirements incorporated into a public contract could result in debarment under § 32.305(b).

The common rule requires a hearing only where there exists a genuine dispute as to facts material to a proposed debarment or suspension. EPA is adding language to §§ 32.313 and 32.412, permitting a respondent to request a hearing regardless of whether there are "material facts" in dispute. This reflects EPA's policy and current practice of affording all respondents the same procedural options for the resolution of pertinent issues. A request for hearing upon suspension, however, is still subject to denial under § 32.412(b)(1)(ii), where pending or contemplated legal proceedings would be prejudiced.

Also, the common rule makes no provision for post-determination review of debarment or suspension decisions. EPA is opting to retain its current post-determination review procedures by adding §§ 32.330 and 32.425, which permit a party to request the debarred/suspending official to reconsider a decision to debar or suspend due to an error of fact or law. EPA is also adding §§ 32.335 and 32.430, which permit discretionary review of debarment and suspension decisions by the Director of EPA's Office of Administration, upon a written appeal filed within 30 calendar days of receipt of the debarred or suspending official's determination. We note that several comments to the proposed common rule recommended that an administrative review process be provided.

The common rule states generally that the "Agency" is authorized to settle debarment and suspension actions. At

EPA this authority is vested in the Director, Grants Administration Division, as the debarred and suspending official. Accordingly, EPA is adding subparagraph (1) to § 32.315(a) to reflect this responsibility.

The proposed common rule contained a certification requirement which encompassed a range of important information from which to determine the current eligibility or potential responsibility of the prospective participant. In the final common rule, there are separate certifications, one for primary covered transactions (e.g., assistance recipients) and one for lower-tier covered transactions (e.g., contractors, subcontractors, suppliers). The lower-tier certification is an abbreviated version of the primary-tier certification.

Because EPA is most vulnerable to waste, fraud or abuse at the lower-tier level, EPA is expanding the certification for lower-tier participants by requiring them to certify to much of the same information provided in the certification submitted by primary participants. Accordingly, paragraph (3) and subparagraphs (a) (b) and (c) are being added to the lower-tier certification form.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Assistance programs—environmental protection, Technical assistance.

Lee M. Thomas,
Administrator.

Dated: May 11, 1988.

Title 40 of the Code of Federal Regulations is amended as set forth below.

1. Part 32 is revised to read as set forth at the end of this document:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**Subpart A—General**

Sec.
32.100 Purpose.
32.105 Definitions.
32.110 Coverage.
32.115 Policy.

Subpart B—Effect of Action

32.200 Debarment or suspension.
32.205 Ineligible persons.
32.210 Voluntary exclusion.
32.215 Exception provision.
32.220 Continuation of covered transactions.
32.225 Failure to adhere to restrictions.

Subpart C—Debarment

32.300 General.
32.305 Causes for debarment.

- 32.310 Procedures.
- 32.311 Investigation and referral.
- 32.312 Notice of proposed debarment.
- 32.313 Opportunity to contest proposed debarment.
- 32.314 Debarring official's decision.
- 32.315 Settlement and voluntary exclusion.
- 32.320 Period of debarment.
- 32.325 Scope of debarment
- 32.330 Reconsideration.
- 32.335 Appeal.

Subpart D—Suspension

- 32.400 General.
- 32.405 Causes for suspension.
- 32.410 Procedures.
- 32.411 Notice of suspension.
- 32.412 Opportunity to contest suspension.
- 32.413 Suspending official's decision.
- 32.415 Period of suspension.
- 32.420 Scope of suspension.
- 32.425 Reconsideration.
- 32.430 Appeal.

Subpart E—Responsibilities of GSA, Agency and Participants

- 32.500 GSA responsibilities.
- 32.505 EPA responsibilities.
- 32.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transaction

Authority: Executive Order 12549; 7 U.S.C. 136 et seq.; 15 U.S.C. 2801 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4001, 6801, 7401, 6802 et seq.

Subpart A—General

§ 32.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

- (1) Prescribing the programs and activities that are covered by the governmentwide system;
- (2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 32.106(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 32.106 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

(3) The Director, Grants Administration Division, is the authorized debarring official.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement

programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on

behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person*. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence*. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal*. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) Bid and proposal estimators and preparers.

(q) *Proposal*. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent*. A person against whom a debarment or suspension action has been initiated.

(s) *State*. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official*. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The Director, Grants Administration Division, is the authorized suspending official.

(u) *Suspension*. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded*. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *EPA*. Environmental Protection Agency.

(x) *Agency Head*. Administrator of the Environmental Protection Agency.

§ 32.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction*. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction*. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction*. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold

fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Provider of federal'-required audit services.

(2) *Exceptions*. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(A) For the purpose of this paragraph, no transactions under EPA assistance programs are deemed to be pursuant to agency-recognized emergencies or disasters.

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections*.

This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 32.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 32.110(a). Sections 32.325, "Scope of debarment," and 32.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 32.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 32.318 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, EPA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

(1) The debarring and suspending official is the official authorized to settle debarment or suspension actions.

§ 32.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 32.311 through 32.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a

request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 32.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 32.311 through 32.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.*

The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The

fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to

other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§ 32.330 Reconsideration.

Any party to the action may petition the debarring official to reconsider a debarment determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the determination.

§ 32.335 Appeal.

(a) The debarment determination under § 32.314 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the debarring official by filing a request with the OA Director within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the debarring official may stay the effective date of a debarment order pending resolution of the appeal. If a debarment is stayed, the stay shall be automatically lifted if the OA Director affirms the debarment.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, and abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.314 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31 or 33 of this subchapter.

Subpart D—Suspension

§ 32.400 General.

(a) The suspending official may suspend a person for any of the causes in § 32.405 using procedures established in §§ 32.410 through 32.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 32.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 32.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 32.400 through 32.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 32.305(a); or

(2) That a cause for debarment under § 32.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 32.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* EPA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 32.411 through § 32.413.

§ 32.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 32.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 32.411 through § 32.413 and any other EPA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 32.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) If the respondent desires a hearing, it shall submit a written request to the suspending official within the 30-day period following receipt of the notice of suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 32.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 32.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force.

However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 32.416 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a

suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 32.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 32.325), except that the procedures of §§ 32.410 through 32.413 shall be used in imposing a suspension.

§ 32.425 Reconsideration.

Any party to the action may petition the suspending official to reconsider a suspension determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the suspension determination.

§ 32.430 Appeal.

(a) The suspension determination under § 32.413 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the suspending official by filing a request with the OA Director within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the suspending official may stay the effective date of a suspension order pending resolution of appeal. If a suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the suspension.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.413 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31, or 33 of this subchapter.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 32.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 32.505 EPA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which EPA has granted exceptions under § 32.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 32.500(b) and of the exceptions granted under § 32.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal

or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 32.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals.

Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to EPA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently included for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(3) The prospective lower-tier participant also certifies that it and its principals:

(a) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(b) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (3)(a) of this certification; and

(c) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default. Where the prospective lower-tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

ANTI-LOBBYING ACT OF 1990

IMPORTANT NOTE

The attached Anti-Lobbying Certification must be completed and returned if you are requesting \$100,000 or more in federal funds.

(Please note: This page does not need to be returned if completing the Anti-Lobbying Certification)



Applicant Name: _____
Project/Program Title: _____

ANTI-LOBBYING ACT OF 1990 APPLICANT CERTIFICATION

This Certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required Certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies to the best of his or her knowledge and belief, that:

- (1) *No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*
- (2) *If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.*
- (3) *The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.*

Date


Signature of Authorized Representative

(R7PLMG/GRAD:12/94)

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
 County of Boone } ea.

December Session of the October Adjourned

Term. 20 05

In the County Commission of said county, on the

22nd

day of December

20 05

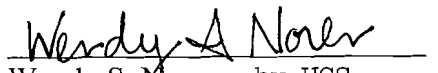
the following, among other proceedings, were had, viz:

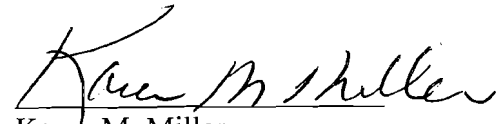
Now on this day the County Commission of the County of Boone does hereby approve City of Columbia Cooperative Contract 261/02 for the Employee Assistance Program with CH Services, Inc. d/b/a/ Boone Hospital Center. It is further ordered that the Presiding Commissioner be hereby authorized to sign said contract.

Done this 22nd day of December, 2005.


 Keith Schnarre
 Presiding Commissioner

ATTEST:


 Wendy S. Noren by HCS
 Clerk of the County Commission


 Karen M. Miller
 District I Commissioner

absent

 Skip Elkin
 District II Commissioner

BOONE COUNTY

REQUEST FOR DISPOSAL OF COUNTY PROPERTY

DATE 11.30.5 FIXED ASSET TAG NUMBER 12169

DESCRIPTION 2000 MAROON CHEVY LUMINA

REQUESTED MEANS OF DISPOSAL: SELL

OTHER INFORMATION:

CONDITION OF ASSET POOR, FAULTY TRANSMISSION & ENGINE

REASON FOR DISPOSITION INOPERABLE

DEPARTMENT _____ SIGNATURE [Signature]

AUDITOR

ORIGINAL PURCHASE DATE 2/10/2000
ORIGINAL COST 16,950
ORIGINAL FUNDING SOURCE 2731 - Gen Fund 1605

COUNTY COMMISSION / COUNTY CLERK

APPROVED DISPOSAL METHOD:

TRANSFER DEPARTMENT NAME _____ NUMBER _____
LOCATION WITHIN DEPARTMENT _____
INDIVIDUAL _____

TRADE AUCTION SEALED BIDS
 OTHER EXPLAIN _____

COMMISSION ORDER NUMBER 493-2005

DATE APPROVED December 22, 2005

SIGNATURE [Signature]

Boone County Purchasing

Melinda Bobbitt, CPPB
Director of Purchasing



601 E. Walnut, Room 208
Columbia, MO 65201
Phone: (573) 886-4391
Fax: (573) 886-4390

Email: mbobbitt@boonecountymo.org

MEMORANDUM

TO: Boone County Commission

FROM: Melinda Bobbitt, CPPB
Director of Purchasing

RE: Disposal of 2000 Chevrolet Lumina Car

DATE: December 13, 2005

The Purchasing Department is requesting permission to dispose of the following:

2000 Chevrolet Lumina
Vin #: 2G1WL52J8Y1230172

The Sheriff Department reports that the car is inoperable. The transmission and engine need repair.

cc: Sue Lake, Auditor
Greg Edington, PW
Leasa Quick, Sheriff
Tom O'Sullivan, Sheriff

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
 County of Boone } ea.

December Session of the October Adjourned

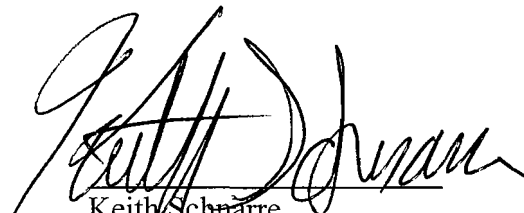
Term. 20 05

In the County Commission of said county, on the 22nd day of December 20 05

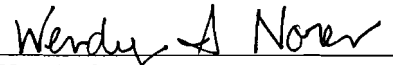
the following, among other proceedings, were had, viz:

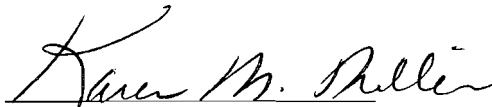
Now on this day the County Commission of the County of Boone does hereby award bid 79-08DEC05 for Waste Collection Services Term and Supply to Onyx Waste Midwest. It is further ordered that the Presiding Commissioner be hereby authorized to sign said contract.

Done this 22nd day of December, 2005.


 Keith Schmarre
 Presiding Commissioner

ATTEST:


 Wendy S. Moren by HCS
 Clerk of the County Commission


 Karen M. Miller
 District I Commissioner

absent

 Skip Elkin
 District II Commissioner

Bid Tabulation

79-08DEC05 Waste Collection Services Term and Supply

		Onyx Waste Midwest						
4.7	Cont. Size	Bi-weekly	1 time	2 times	3 times	4 times	5 times	1 Time Extra P/U
4.7.1	1 Cubic Yd.	\$30.00	\$37.00	\$47.00	\$62.00	\$79.00	\$93.00	\$15.00
4.7.2	2 Cubic Yd.	\$38.00	\$46.00	\$60.00	\$77.00	\$90.00	\$110.00	\$15.00
4.7.3	3 Cubic Yd.	\$46.00	\$58.00	\$75.00	\$92.00	\$117.00	\$140.00	\$15.00
4.7.4	4 Cubic Yd.	\$58.00	\$67.00	\$90.00	\$116.00	\$136.00	\$165.00	\$20.00
4.7.5	6 Cubic Yd.	\$67.00	\$89.00	\$105.00	\$135.00	\$150.00	\$190.00	\$20.00
4.7.6	8 Cubic Yd.	\$89.00	\$105.00	\$120.00	\$150.00	\$180.00	\$240.00	\$20.00
4.7.7	10 Cubic Yd.	\$100.00	\$120.00	\$135.00	\$190.00	\$220.00	\$250.00	\$25.00

- 4.13 Max % Increase
 - 2nd 3%
 - 3rd 3%
 - 4th 3%
 - 5th 3%
- 4.14 Coop Yes

Evaluation of level of service as Boone County currently requires:

T-MAC

1 two cubic yard dumpster serviced 3 times per week	\$75.00
2 one cubic yard dumpsters serviced 2 times per week	\$100.00
1 two cubic yard dumpster serviced bi-weekly	\$38.50
Total	\$213.50

AAA Waste Management

1 two cubic yard dumpster serviced 3 times per week	\$108.00
2 one cubic yard dumpsters serviced 2 times per week	\$123.00
1 two cubic yard dumpster serviced bi-weekly	No Bid
Total	\$231.00

Onyx Waste Midwest

1 two cubic yard dumpster serviced 3 times per week	\$77.00
2 one cubic yard dumpsters serviced 2 times per week	\$94.00
1 two cubic yard dumpster serviced bi-weekly	\$38.00
Total	\$209.00

Boone County Purchasing

Heather Turner, CPPB
Buyer



601 E. Walnut, Room 209
Columbia, MO 65201
Phone: (573) 886-4392
Fax: (573) 886-4390

MEMORANDUM

TO: Boone County Commission
FROM: Heather Turner, CPPB
DATE: December 15, 2005
RE: 79-08DEC05 Waste Collection Services Term & Supply

The Bid for Waste Collection Services for the Boone County Public Works Department closed on December 8, 2005. Three (3) bids were received. Purchasing and the Public Works Department recommend award to Onyx Waste Midwest for submitting the low bid.

This Term & Supply contract will be paid out of department 2040 PW Maintenance Operations, Account Number 48400 Solid Waste.

Please find attached a copy of the bid tabulation for your review.

ATT: Bid Tabulation

cc: Chip Estabrooks, Public Works
Bid File

Bid Tabulation

79-08DEC05 Waste Collection Services Term and Supply

		T-MAC, Inc.						
4.7	Cont. Size	Bi-weekly	1 time	2 times	3 times	4 times	5 times	1 Time Extra P/U
4.7.1	1 Cubic Yd.	\$32.50	\$35.00	\$50.00	\$62.50	\$75.00	\$87.50	\$15.00
4.7.2	2 Cubic Yd.	\$38.50	\$42.50	\$60.00	\$75.00	\$90.00	\$105.00	\$20.00
4.7.3	3 Cubic Yd.	\$42.50	\$50.00	\$65.00	\$80.00	\$95.00	\$110.00	\$25.00
4.7.4	4 Cubic Yd.	\$47.50	\$55.00	\$75.00	\$95.00	\$115.00	\$135.00	\$27.50
4.7.5	6 Cubic Yd.	\$52.50	\$60.00	\$95.00	\$130.00	\$165.00	\$200.00	\$35.00
4.7.6	8 Cubic Yd.	\$62.50	\$70.00	\$110.00	\$150.00	\$190.00	\$230.00	\$40.00
4.7.7	10 Cubic Yd.	N/A	N/A	N/A	N/A	N/A	N/A	N/A

- 4.13 Max % Increase
 2nd 2%
 3rd 3%
 4th 3%
 5th 3%
- 4.14 Coop Yes

		AAA Waste Management						
4.7	Cont. Size	Bi-weekly	1 time	2 times	3 times	4 times	5 times	1 Time Extra P/U
4.7.1	1 Cubic Yd.	\$38.00		\$61.50				\$25.00
4.7.2	2 Cubic Yd.				\$108.00			\$30.00
4.7.3	3 Cubic Yd.							
4.7.4	4 Cubic Yd.							
4.7.5	6 Cubic Yd.							
4.7.6	8 Cubic Yd.							
4.7.7	10 Cubic Yd.							

- 4.13 Max % Increase
 2nd 5%
 3rd 5%
 4th 5%
 5th 5%
- 4.14 Coop Yes

**PURCHASE AGREEMENT
FOR
WASTE COLLECTION SERVICES TERM AND SUPPLY**

THIS AGREEMENT dated the 22nd day of December 2005 is made between Boone County, Missouri, a political subdivision of the State of Missouri through the Boone County Commission, herein "County" and **Onyx Waste Midwest**, herein "Contractor."

IN CONSIDERATION of the parties performance of the respective obligations contained herein, the parties agree as follows:

1. Contract Documents - This agreement shall consist of this Purchase Agreement for **Waste Collection Services Term and Supply**, County of Boone Request for Bid, bid number **79-08DEC05**, Introduction and General Conditions of Bidding, Primary Specifications, Response Presentation and Review, the un-executed Response Form, Standard Terms and Conditions, as well as the Contractor's bid response dated December 7, 2005 and executed by Chuck Moore on behalf of the Contractor. All such documents shall constitute the contract documents, which are attached hereto and incorporated herein by reference. Service or product data, specification and literature submitted with bid response may be permanently maintained in the County Purchasing Office bid file for this bid if not attached. In the event of conflict between any of the foregoing documents, the Introduction and General Conditions of Bidding, Primary Specifications, Response Presentation and Review, the un-executed Response Form, and Standard Terms and Conditions shall prevail and control over the Contractor's bid response.

2. Contract Duration - This agreement shall commence on January 1, 2006 and extend through December 31, 2006, subject to the provisions for termination specified below. This agreement may be extended beyond the expiration date by order of the County for four (4) additional one-year periods subject to the pricing clauses in the Contractor's bid response and thereafter on a month to month basis in the event the County is unable to re-bid and/or award a new contract prior to the expiration date after exercising diligent efforts to do so or not.

3. Purchase - The County agrees to purchase from the Contractor and the Contractor agrees to supply the County with Waste Collection Services as identified and responded to in the Contractor's Response Form. Services will be provided as required in the bid specifications and in conformity with the contract documents for the prices set forth in the Contractor's bid response, as needed and as ordered by the County.

4. Billing and Payment - All billing shall be invoiced to the Boone County Public Works Department, and may only include the prices as identified in the Contractor's bid response. No additional fees for delivery or extra services not included in the bid response or taxes shall be included as additional charges in excess of the charges in the Contractor's bid response to the specifications. The County agrees to pay all invoices within thirty days of receipt; Contractor agrees to honor any cash or prompt payment discounts offered in its bid response if county makes payment as provided therein. In the event of a billing dispute, the County reserves the right to withhold payment on the disputed amount; in the event the billing dispute is resolved in favor of the Contractor, the County agrees to pay interest at a rate of 9% per annum on disputed amounts withheld commencing from the last date that payment was due.

5. Binding Effect - This agreement shall be binding upon the parties hereto and their successors and assigns for so long as this agreement remains in full force and effect.

6. Entire Agreement - This agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, written or verbal, and any other bid or bid specification or contractual agreement. This agreement may only be amended by a signed writing executed with the same formality as this agreement.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
 County of Boone } ca.

December Session of the October Adjourned

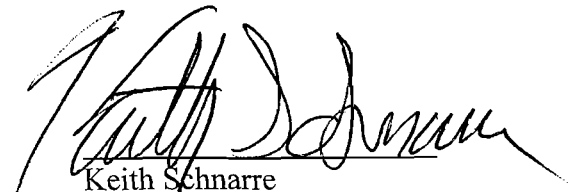
Term. 20 05

In the County Commission of said county, on the 22nd day of December 20 05

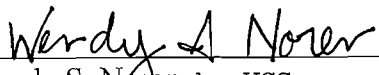
the following, among other proceedings, were had, viz:

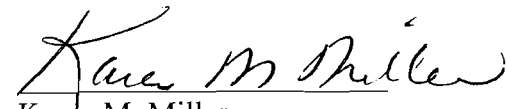
Now on this day the County Commission of the County of Boone does hereby award bid 81-13DEC05 for Electronic Media Storage Term and Supply to Data Retention Service. It is further ordered that the Presiding Commissioner be hereby authorized to sign said contract.

Done this 22nd day of December, 2005.


 Keith Schnarre
 Presiding Commissioner

ATTEST:


 Wendy S. Noren by HCS
 Clerk of the County Commission


 Karen M. Miller
 District I Commissioner

absent _____
 Skip Elkin
 District II Commissioner

Boone County Purchasing

Melinda Bobbitt, CPPB
Director



601 E. Walnut, Room 208
Columbia, MO 65201
Phone: (573) 886-4391
Fax: (573) 886-4390

MEMORANDUM

TO: Boone County Commission
FROM: Melinda Bobbitt, CPPB
DATE: December 15, 2005
RE: 81-13DEC05 – Electronic Media Storage Term and Supply

The Bid for Electronic Media Storage – Term and Supply closed on December 13, 2005. Three bids were received. Purchasing and Information Technology recommend award to Data Retention Service for offering the low bid for Boone County.

This term and supply contract will be paid out of department 1170 - Information Technology, account 71100 - Outside Services. \$10,000 has been budgeted for this service for 2006.

Please find attached a copy of the bid tabulation for your review.

ATT: Bid Tabulation

cc: Mike Mallicoat, IT
Bid File

Bid Tab 81-13DEC05
Electronic Media Storage Term and Supply

	Underground Records Management	Zarchivist	Data Retention Services
DESCRIPTION	AMOUNT	AMOUNT	AMOUNT
Storage Price per Month for 0-20 Electronic Media for permanent storage in vault:	0.50/tape	\$15.00	\$10.00
Storage Price per Month per each additional 0-10 Electronic Media sets:	0.50/tape	\$10.00	\$5.00
Courier Service per Month for Pickup\Return of 0-20 Electronic Media for one location: Government Center	\$217.50	\$600.00	\$241.50
Emergency Courier Service fee per occurrence outside of regular schedule on a weekday	\$35.00	\$75.00	\$19.00
Emergency Courier Service fee per occurrence outside of regular schedule on weekends or holidays	\$50.00	\$95.00	\$45.00
Maximum Percentage increase			
2nd	0%	5%	0%
3rd	5% delivery only	5%	0%
4th	5%	5%	0%
5th	5%	5%	0%
Complete Daily Electronic Media Storage/Backup Service shall begin ____ days after notice to proceed	No Bid	30	1
CO-OP	Yes	Yes	Yes

**PURCHASE AGREEMENT
FOR
ELECTRONIC MEDIA STORAGE
TERM AND SUPPLY**

THIS AGREEMENT dated the 22nd day of December 2005 is made between Boone County, Missouri, a political subdivision of the State of Missouri through the Boone County Commission, herein "County" and **Data Retention Services Inc.**, herein "Contractor."

IN CONSIDERATION of the parties performance of the respective obligations contained herein, the parties agree as follows:

1. **Contract Documents** - This agreement shall consist of this Purchase Agreement for **Electronic Media Storage**, County of Boone Request for Bid for Electronic Media Storage, bid number **81-13DEC05** including Introduction and General Conditions of Bidding, Primary Specifications, Response Presentation and Review, the un-executed Response Form, as well as the Contractor's bid response dated December 12, 2005 and executed by David Cruse on behalf of the Contractor. All such documents shall constitute the contract documents, which are attached hereto and incorporated herein by reference. In the event of conflict between any of the foregoing documents, the County of Boone Request for Bid for Electronic Media Storage, bid number 81-13DEC05, including Introduction and General Conditions of Bidding, Primary Specifications, Response Presentation and Review, and the un-executed Response Form shall prevail and control over the Contractor's bid response.
2. **Purchases/Services** - The County agrees to purchase from the Contractor and the Contractor agrees to supply the County Electronic Media Storage as specified in the bid documents and in conformity with the contract documents for the prices set forth in the Contractor's bid response, as needed and as ordered by County.
3. **Contract Period** - This Term and Supply Contract will have an initial term from January 1, 2006 through December 31, 2006. After the initial term, this contract shall automatically renew each year for up to four (4) one-year renewal terms, unless canceled by the County upon written notice prior to the beginning of a renewal term.
4. **Delivery** - Contractor agrees to provide storage and pickup at one location (Government Center) in Boone County. All service will be provided in accordance with section 2.3. of the original bid documents. Complete Electronic Media Storage shall begin one day after notice to proceed.
5. **Billing and Payment** - All billing shall be invoiced to the Boone County Information Technology Department and billings may only include the prices listed in the Contractor's bid response. No additional fees for delivery or extra services or taxes shall be included as additional charges in excess of the charges in the Contractor's bid response to the specifications. The County agrees to pay all invoices within thirty days of receipt; Contractor agrees to honor any cash or prompt payment discounts offered in its bid response if county makes payment as provided therein. In the event of a billing dispute, the County reserves the right to withhold

payment on the disputed amount; in the event the billing dispute is resolved in favor of the Contractor, the County agrees to pay interest at a rate of 9% per annum on disputed amounts withheld commencing from the last date that payment was due.

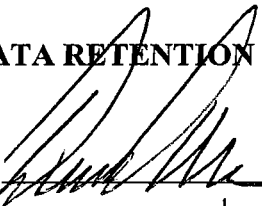
6. **Binding Effect** - This agreement shall be binding upon the parties hereto and their successors and assigns for so long as this agreement remains in full force and effect.

7. **Entire Agreement** - This agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, written or verbal, and any other bid or bid specification or contractual agreement. This agreement may only be amended by a signed writing executed with the same formality as this agreement.

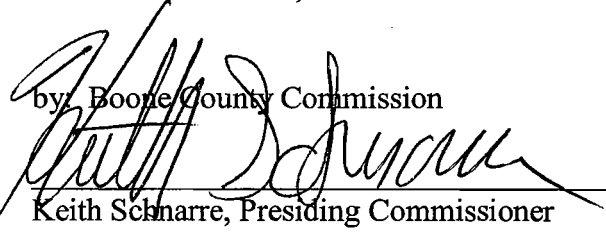
8. **Termination** - This agreement may be terminated by the County upon thirty days advance written notice for any of the following reasons or under any of the following circumstances:
a. County may terminate this agreement due to material breach of any term or condition of this agreement, or
b. County may terminate this agreement if in the opinion of the Boone County Commission if delivery of products are delayed or products delivered are not in conformity with bidding specifications or variances authorized by County, or
c. If appropriations are not made available and budgeted for any calendar year.

IN WITNESS WHEREOF the parties through their duly authorized representatives have executed this agreement on the day and year first above written.

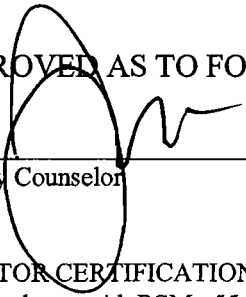
DATA RETENTION SERVICES INC.

by 
title President


BOONE COUNTY, MISSOURI

by 
Keith Schmarre, Presiding Commissioner

APPROVED AS TO FORM:


County Counselor

ATTEST:


Wendy S. Noren, County Clerk by HCS

AUDITOR CERTIFICATION

In accordance with RSMo 55.660, I hereby certify that a sufficient unencumbered appropriation balance exists and is available to satisfy the obligation(s) arising from this contract. (Note: Certification of this contract is not required if the terms of this contract do not create a measurable county obligation at this time.)

Term and Supply 1170-71100

no encumbrance required
Signature by [initials]

12/16/05
Date

Appropriation Account

4. Response Form

- 4.1. Company Name: Data Retention Services, Inc.
- 4.2. Address: 2900 Lemone Industrial Blvd.
- 4.3. City/Zip: Columbia, MO 65201
- 4.4. Phone Number: 815-1115
- 4.5. Fax Number: 815-1116
- 4.6. Corporation
 Partnership - Name _____
 Individual/Proprietorship - Individual Name _____
 Other (Specify) _____

4.7. Pricing

4.7.1.	Storage Price per Month for 0-20 Electronic Media for permanent storage in vault:	\$ 10.00
4.7.2.	Storage Price per Month per each additional 0-10 Electronic Media sets:	\$ 5.00
4.7.3.	Courier Service per Month for Pickup/Return of 0-20 Electronic Media for one location: Government Center	\$ 241.50
4.7.4.	Emergency Courier Service fee per occurrence outside of regular schedule on a weekday	\$ 19.00
4.7.5.	Emergency Courier Service fee per occurrence outside of regular schedule on weekends or holidays	\$ 45.00
4.7.6.	Maximum Percentage Increase for <u>0</u> % 2nd Year <u>0</u> % 3rd Year <u>0</u> % 4th Year <u>0</u> % 5th Year	
4.7.7.	Complete Daily Electronic Media Storage/Backup Service shall begin <u>one</u> days after notice to proceed.	

- 4.8. Will you honor the submitted prices for purchase of service by other entities in Boone County who participate in cooperative purchasing with Boone county, Missouri?
XX Yes No

- 4.9. **References** – Bidder must provide three (3) references for services rendered to public/commercial clients which are similar in size and scope.

4.9.1. Reference #1

- 4.9.1.1. Individual Name: Joe Short
- 4.9.1.2. Company Name: Shelter Insurance
- 4.9.1.3. Address: 1817 West Broadway, Columbia, MO 65218
- 4.9.1.4. Telephone: 214-4187

4.9.2. Reference #2

- 4.9.2.1. Individual Name: Bill Copeland
- 4.9.2.2. Company Name: Missouri Employers Mutual Insurance
- 4.9.2.3. Address: 101 N. Keene Street, Columbia, MO 65201

4.9.2.4. Telephone: 499-4160

4.9.3. **Reference #3**

4.9.3.1. Individual Name: Mike Mallicoat

4.9.3.2. Company Name: Boone County Government Center

4.9.3.3. Address: 801 E. Walnut Street, Columbia, MO 65201

4.9.3.4. Telephone: 886-4316

PLEASE SUBMIT THREE (3) COPIES OF THE RESPONSE

4.10. **The undersigned offers to furnish and deliver the articles or services as specified at the prices and terms stated and in strict accordance with all requirements contained in the Invitation for Bid which have been read and understood, and all of which are made part of this order.** By submission of this bid, the vendor certifies that they are in compliance with Section 34.353 and, if applicable, Section 34.359 ("Missouri Domestic Products Procurement Act") of the Revised Statutes of Missouri.

4.10.1. Authorized Representative (Sign By Hand):  Date: 12-12-05

4.10.2. Print Name and Title of Authorized Representative
David A Rose President

Bid Number: 81-13DEC05

Data Retention Services, Inc.

2.5.2.1 Our building is constructed of concrete and steel. Walls and roof are all steel with six inches of insulation. The floor is concrete over six inches thick rated at 2,500 to 3,000 psi. Our entire facility is protected by an automated sprinkler system. All material handling equipment is electric, no propane is utilized.

2.5.3.1 The vault is constructed in a multi layer design to ensure media protection and superior climate control. The walls are constructed of eight inch thick concrete block with cavities in the blocks filled during construction with perlite. Surrounding the concrete block wall is a four inch thick wall constructed with metal studs and insulated. Finally, the entire wall was covered with 5/8" thick fire rated drywall. The ceiling is six inches of concrete poured over 1/8" steel. Below this is a 6" cavity consisting of steel support members and all voids filled with perlite. Finally, the interior was covered with 5/8" fire rated drywall. The vault door is a 4 hour rated door.



Request for Bid (Bid)

Boone County Purchasing
601 E. Walnut, Room 208
Columbia, MO 65201

Melinda Bobbitt, CPPB, Director
Phone: (573) 886-4391 Fax: (573) 886-4390
Email: mbobbitt@boonecountymo.org

Bid Data

Bid Number: **81-13DEC05**
Commodity Title: **Electronic Media Storage Term and Supply**

DIRECT BID FORMAT OR SUBMISSION QUESTIONS TO THE PURCHASING DEPARTMENT

Bid Submission Address and Deadline

Day / Date: **TUESDAY – December 13, 2005**
Time: **10:30 A.M. (Bids received after this time will be returned unopened)**
Location / Mail Address: **Boone County Purchasing Department
Boone County Johnson Building
601 E. Walnut, Room 208
Columbia, MO 65201**

Directions: The Johnson Building is located on the Northeast corner at 6th St. and Walnut St. Enter the building from the East Side. Wheel chair accessible entrance is available on the West side of the building.

Bid Opening

Day / Date: **TUESDAY – December 13, 2005**
Time: **10:30 A.M.**
Location / Address: **Boone County Johnson Building Conference Room
601 E. Walnut, Room 213
Columbia, MO 65201**

Bid Contents

- 1.0: **Introduction and General Conditions of Bidding**
- 2.0: **Primary Specifications**
- 3.0: **Response Presentation and Review**
- 4.0: **Response Form**
- Exhibit A **Standard Terms and Conditions**
- Exhibit B **Statement of Bidder's Qualifications**

1. Introduction and General Conditions of Bidding

- 1.1. **INVITATION** - The County of Boone, through its Purchasing Department, invites responses, which offer to provide the goods and/or services identified on the title page, and described in greater detail in Section 2.
- 1.2. **DEFINITIONS**
- 1.2.1. **County** - This term refers to the County of Boone, a duly organized public entity. It may also be used as a pronoun for various subsets of the County organization, including, as the context will indicate:
Purchasing - The Purchasing Department, including its Purchasing Director and staff.
Department/s or Office/s - The County Department/s or Office/s for which this Bid is prepared, and which will be the end user/s of the goods and/or services sought.
Designee - The County employee/s assigned as your primary contact/s for interaction regarding Contract performance.
- 1.2.2. **Bidder / Contractor / Supplier** - These terms refer generally to businesses having some sort of relationship to or with us. The term may apply differently to different classes of entities, as the context will indicate.
Bidder - Any business entity submitting a response to this Bid. Suppliers, which may be invited to respond, or which express interest in this bid, but which do not submit a response, have no obligations with respect to the bid requirements.
Contractor - The Bidder whose response to this bid is found by Purchasing to meet the best interests of the County. The Contractor will be selected for award, and will enter into a Contract for provision of the goods and/or services described in the Bid.
Supplier - All business/s entities which may provide the subject goods and/or services.
- 1.2.3. **Bid** - This entire document, including attachments. A Bid may be used to solicit various kinds of information. The kind of information this Bid seeks is indicated by the title appearing at the top of the first page. An "Invitation For Bid" is used when the need is well defined. An "Invitation For Proposal" is used when the County will consider solutions, which may vary significantly from each other or from the County's initial expectations.
- 1.2.4. **Response** - The written, sealed document submitted according to the Bid instructions.
- 1.3. **BID CLARIFICATION** - Questions regarding this Bid should be directed in writing, by e-mail or fax, to the Purchasing Department. Answers, citing the question asked but not identifying the questioner, will be distributed simultaneously to all known prospective Bidders in the form of an addendum. We strongly suggest that you check for any addenda a minimum of [forty eight] hours in advance of the bid deadline. Bids, addendums, bid tabulations and bid awards are posted on our web site at: www.showmeboone.com
 Note: written requirements in the Bid or its Amendments are binding, but any oral communications between County and Bidder are not.
- 1.3.1. **Bidder Responsibility** - The Bidder is expected to be thoroughly familiar with all specifications and requirements of this Bid. Bidder's failure or omission to examine any relevant form, article, site or document will not relieve them from any obligation regarding this Bid. By submitting a Response, Bidder is presumed to concur with all terms, conditions and specifications of this Bid.
- 1.3.2. **Bid Amendment** - If it becomes evident that this Bid must be amended, the Purchasing Department will issue a formal written Amendment to all known prospective Bidders. If necessary, a new due date will be established.
- 1.4. **AWARD** - Award will be made to the Bidder(s) whose offer(s) provide the greatest value to the County from the standpoint of suitability to purpose, quality, service, previous experience, price, lifecycle cost, ability to deliver, or for any other reason deemed by Purchasing to be in the best interest of the County. Thus, the result will not be determined by price alone. The County will be seeking the least costly outcome that meets the County needs as interpreted by the County.
- 1.5. **CONTRACT EXECUTION** - This Bid and the Contractor's Response will be made part of any resultant Contract and will be incorporated in the Contract as set forth, verbatim.
- 1.5.1. **Precedence** - In the event of contradictions or conflicts between the provisions of the documents comprising this Contract, they will be resolved by giving precedence in the following order:
 1) the provisions of the Contract (as it may be amended);
 2) the provisions of the Bid;
 3) the provisions of the Bidder's Response.
- 1.6. **CONTRACT PERIOD** - Any Term and Supply Contract period resulting from this Bid will have an initial term from January 1, 2006 through December 31, 2006, and may be automatically renewed yearly for an additional four (4) one-year periods unless canceled by the Purchasing Director in writing prior to a renewal term.
- 1.7. **COMPLIANCE WITH STANDARD TERMS AND CONDITIONS** - Bidder agrees to be bound by the County's standard "boilerplate" terms and conditions for Contracts, a sample of which is attached to this Bid.

each party and the assurances of performance offered shall clearly be identified. The County prefers to contract with a single or primary vendor.

- 2.7. **Descriptive Literature and Reports:** Bidders shall submit with their Bid complete descriptive literature and detailed specifications.
- 2.8. **ESTIMATED QUANTITIES** - The estimated quantities of backup media to be picked up by Contractor are estimated based on past usage for a 12-month period. The County reserves the right to increase or decrease quantities as requirements dictate.
- 2.9. **INSURANCE REQUIREMENTS** - The Contractor shall not commence work under this contract until they have obtained all insurance required under this paragraph and such insurance has been approved by the County. All policies shall be in amounts, form and companies satisfactory to the County which must carry an A-6 or better rating as listed in the A.M. Best or equivalent rating guide.
- 2.9.1. **Compensation Insurance** - The Contractor shall take out and maintain during the life of this contract, **Employee's Liability and Worker's Compensation Insurance** for all of their employees employed at the site of work, and in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor.

Worker's Compensation coverage shall meet Missouri statutory limits. Employers' Liability limits shall be \$500,000.00 each employee, \$500,000.00 each accident, and \$500,000.00 policy limit. In case any class of employees engaged in hazardous work under this Contract at the site of the work is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide Employers' Liability Insurance for the protection of their employees not otherwise protected.

- 2.9.2. **Comprehensive General Liability Insurance** - The Contractor shall take out and maintain during the life of this contract, such comprehensive general liability insurance as shall protect them from claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 per project limit for any one occurrence covering both bodily injury and property damage, including accidental death. If the Contract involves any underground/digging operations, the general liability certificate shall include X, C, and U (Explosion, Collapse, and Underground) coverage. If providing Comprehensive General Liability Insurance, then the Proof of Coverage of Insurance shall also be included. **Proof of Coverage of Insurance** - The Contractor shall furnish the County with Certificate(s) of Insurance which name **the County of Boone – Missouri as additional insured** in an amount as required in this contract and requiring a thirty (30) day mandatory cancellation notice. In addition, such insurance shall be on an occurrence basis and shall remain in effect until such time as the County has made final acceptance of the project.

The Contractor has the option to provide **Owner's Contingent or Protective Liability and Property Damage** instead of the **Comprehensive General Liability Insurance**- The Contractor shall provide the County with proof of Owner's Protective Liability and Property Damage Insurance with the County as named insured, which shall protect the County against any and all claims which might arise as a result of the operations of the Contractor in fulfilling the terms of this contract during the life of the Contract. The minimum amounts of such insurance will be \$1,000,000.00 per occurrence, combined single limits. Limits can be satisfied by using a combination of primary and excess coverages. Should any work be subcontracted, these limits will also apply.

- 2.9.3. **COMMERCIAL Automobile Liability** – The Contractor shall maintain during the life of this contract, automobile liability insurance in the amount of not less than \$1,000,000.00 combined single limit for any one occurrence, covering both bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Contractor's own automobiles, teams and trucks; hired automobiles, teams and trucks; and both on

and off the site of work.

2.9.4. **INDEMNITY AGREEMENT:** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County, its directors, agents, and employees from and against all claims arising by reason of any act or failure to act, negligent or otherwise, of Contractor, (meaning anyone, including but not limited to consultants having a contract with Contractor or subcontractor for part of the services), of anyone directly or indirectly employed by Contractor, or of anyone for whose acts the Contractor may be liable, in connection with providing these services. This provision does not, however, require Contractor to indemnify, hold harmless, or defend the County of Boone from its own negligence.

2.10. **DESIGNEE** – Michael Mallicoat, Director of Information Technology, 801 E. Walnut, Columbia, Missouri, 65201.

2.10.1. **Bid Clarification/Contact** – Melinda Bobbitt, CPPB, Director, 601 E. Walnut, Room 208, Columbia, MO 65201. Telephone (573) 886-4391; Facsimile (573) 886-4390 or email: mbobbitt@boonecountymmo.org

2.11 **Payment** - Invoices should be submitted to the Information Technology Department of Boone County for payment which will be made 30 days after receipt of a correct and valid invoice.

3. Response Presentation and Review

- 3.1. **RESPONSE CONTENT** - In order to enable direct comparison of competing Responses, Bidder must submit Response in strict conformity to the requirements stated herein. Failure to adhere to all requirements may result in Bidder's Response being disqualified as non-responsive. Every question must be answered and if not applicable, the section must contain "N/A."
- 3.2. **SUBMITTAL OF RESPONSES** - Responses MUST be received by the date and time noted on the title page under "Bid Submission Information and Deadline". **Note: Bid Submission and Bid Opening times are different. NO EXCEPTIONS.** The County is not responsible for late or incorrect deliveries from the US Postal Service or any other mail carrier.
 - 3.2.1. **Submittal Package** - Submit, to the location specified on the title page, **three (3) complete copies** of your Response in a single sealed envelope, clearly marked on the outside with your company name and return address, **the bid number and the due date and time.**
 - 3.2.2. **Advice of Award** - A Bid Tabulation of responses received as well as Award status can be viewed at www.showmeboone.com. Then select "Purchasing" along the left of the web page.
- 3.3. **BID OPENING** - On the date and time and at the location specified on the title page under "Bid Opening", all Responses will be opened in public. Brief summary information from each will be read aloud.
 - 3.3.1. **Removal from Vendor Database** - If any prospective Bidder currently in our Vendor Database to whom the Bid was sent elects not to submit a Response and fails to reply in writing stating reasons for not bidding, that Bidder's name may be removed from our database. Other reasons for removal include unwillingness or inability to show financial responsibility, reported poor performance, unsatisfactory service, or repeated inability to meet delivery requirements.
- 3.4. **RESPONSE CLARIFICATION** - The County reserves the right to request additional written or oral information from Bidders in order to obtain clarification of their Responses.
 - 3.4.1. **Rejection or Correction of Responses** - The County reserves the right to reject any or all Responses. Minor irregularities or informalities in any Response which are immaterial or inconsequential in nature, and are neither affected by law nor at substantial variance with Bid conditions, may be waived at our discretion whenever it is determined to be in the County's best interest.
- 3.5. **EVALUATION PROCESS** - The County's sole purpose in the evaluation process is to determine from among the Responses received which one is best suited to meet the County's needs at the lowest possible cost. Any final analysis or weighted point score does not imply that one Bidder is superior to another, but simply that in our judgment the Contractor selected appears to offer the best overall solution for our current and anticipated needs at the lowest possible cost.
 - 3.5.1. **Method of Evaluation** - The County will evaluate submitted Responses in relation to all aspects of this Bid.
 - 3.5.2. **Acceptability** - The County reserves the sole right to determine whether goods and/or services offered are acceptable for County use.
 - 3.5.3. **Endurance of Pricing** - Bidder's pricing must be held until contract execution or 60 days, whichever comes first.
 - 3.5.4. **Award** - The County reserves the right to award an order to the lowest aggregate bidder for all items or on an item basis, or a group of like items, whichever is found to be in the best interest of the County. If a split award is not acceptable to a bidder, it must be stated in the bid response.

4. Response Form

4.1. Company Name: _____

4.2. Address: _____

4.3. City/Zip: _____

4.4. Phone Number: _____

4.5. Fax Number: _____

4.6. () Corporation

() Partnership - Name _____

() Individual/Proprietorship - Individual Name _____

() Other (Specify) _____

4.7. Pricing

4.7.1.	Storage Price per Month for 0-20 Electronic Media for permanent storage in vault:	\$ _____
4.7.2.	Storage Price per Month per each additional 0-10 Electronic Media sets:	\$ _____
4.7.3.	Courier Service per Month for Pickup\Return of 0-20 Electronic Media for one location: Government Center	\$ _____
4.7.4.	Emergency Courier Service fee per occurrence outside of regular schedule on a weekday	\$ _____
4.7.5.	Emergency Courier Service fee per occurrence outside of regular schedule on weekends or holidays	\$ _____
4.7.6.	Maximum Percentage Increase for _____ % 2nd Year _____ % 3rd Year _____ % 4 th Year _____ % 5 th Year	
4.7.7.	Complete Daily Electronic Media Storage/Backup Service shall begin _____ days after notice to proceed.	

4.8. Will you honor the submitted prices for purchase of service by other entities in Boone County who participate in cooperative purchasing with Boone county, Missouri?
 _____ Yes _____ No

4.9. **References** – Bidder must provide three (3) references for services rendered to public/commercial clients which are similar in size and scope.

4.9.1. Reference #1

4.9.1.1. Individual Name: _____

4.9.1.2. Company Name: _____

4.9.1.3. Address: _____

4.9.1.4. Telephone: _____

4.9.2. Reference #2

4.9.2.1. Individual Name: _____

4.9.2.2. Company Name: _____

4.9.2.3. Address: _____

4.9.2.4. Telephone: _____

4.9.3. **Reference #3**

4.9.3.1. Individual Name: _____

4.9.3.2. Company Name: _____

4.9.3.3. Address: _____

4.9.3.4. Telephone: _____

PLEASE SUBMIT THREE (3) COPIES OF THE RESPONSE

4.10. **The undersigned offers to furnish and deliver the articles or services as specified at the prices and terms stated and in strict accordance with all requirements contained in the Invitation for Bid which have been read and understood, and all of which are made part of this order.** By submission of this bid, the vendor certifies that they are in compliance with Section 34.353 and, if applicable, Section 34.359 ("Missouri Domestic Products Procurement Act") of the Revised Statutes of Missouri.

4.10.1. Authorized Representative (Sign By Hand): _____ Date: _____

4.10.2. Print Name and Title of Authorized Representative



EXHIBIT A

Boone County Purchasing
601 E. Walnut, Room 208
Columbia, MO 65201

Standard Terms and Conditions

Melinda Bobbitt, CPPB, Director
(573) 886-4391 - FAX (573) 886-4390

1. Responses shall include all charges for packing, delivery, installation, etc., (unless otherwise specified) to the Boone County Department identified in the Request for Bid or Proposal.
2. The Boone County Commission has the right to accept or reject any part or parts of all bids, to waive technicalities, and to accept the offer the County Commission considers the most advantageous to the County.
3. Bidders must use the bid forms provided for the purpose of submitting bids, must return the quotation and bid sheets comprised in this bid, give the unit price, extended totals, and sign the bid.
4. When products or materials of any particular producer or manufacturer are mentioned in our specifications, such products or materials are intended to be descriptive of type or quality and not restricted to those mentioned.
5. Do not include Federal Excise Tax or Sales and Use Taxes in bid process, as law exempts the County from them.
6. The delivery date shall be stated in definite terms, as it will be taken into consideration in awarding the bid.
7. The County Commission reserves the right to cancel all or any part of orders if delivery is not made or work is not started as guaranteed. In case of delay, the Contractor must notify the Purchasing Department.
8. In case of default by the Contractor, the County of Boone will procure the articles or services from other sources and hold the Bidder responsible for any excess cost occasioned thereby.
9. Failure to deliver as guaranteed shall disqualify Bidder from future bidding.
10. Prices must be as stated in units of quantity specified, and must be firm. Bids qualified by escalator clauses may not be considered unless specified in the bid specifications.
11. No bid transmitted by fax machine will be accepted.
12. The County of Boone, Missouri expressly denies responsibility for, or ownership of any item purchased until same is delivered to the County and is accepted by the County.

EXHIBIT B

STATEMENT OF BIDDER'S QUALIFICATIONS

(Return with Bid Response)

1. Number of years in business: _____ If not under present firm name, list previous firm names and types of organizations.

2. Contracts on hand: (Complete the following schedule)

Item	Purchaser	Amount of Contract	Percent Completed
-------------	------------------	---------------------------	--------------------------

3. General type of product sold and manufactured:

4. There has been no default in any contract completed or un-completed except as noted below:

(a) Number of contracts on which default was made: _____

(b) Description of defaulted contracts and reason therefore:

5. List banking references:

Dated at _____

this _____ day of _____, 200 _____.

Name of Organization(s)

By _____
(Signature)

(Title of person signing)



"No Bid" Response Form

Boone County Purchasing
601 E. Walnut, Room 208
Columbia, MO 65201
Melinda Bobbitt, CPPB, Director
(573) 886-4391 – Fax: (573) 886-4390

"NO BID RESPONSE FORM"

**NOTE: COMPLETE AND RETURN THIS FORM ONLY IF YOU DO NOT WANT TO
SUBMIT A BID**

If you do not wish to respond to this bid request, but would like to remain on the Boone County vendor list for this service/commodity, please remove form and return to the Purchasing Department by mail or fax.

If you would like to FAX this "No Bid" Response Form to our office, the FAX number is (573) 886-4390.

Bid: 81-13DEC05 – Electronic Media Storage Term and Supply

Business Name: _____

Address: _____

Telephone: _____

Contact: _____

Date: _____

Reason(s) for not bidding:

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
 County of Boone } ea.

December Session of the October Adjourned

Term. 20 05

In the County Commission of said county, on the 22nd day of December 20 05

the following, among other proceedings, were had, viz:

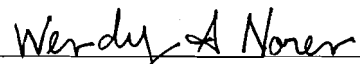
Now on this day the County Commission of the County of Boone does approve the request from the Boone County Sheriff's Department to purchase the following equipment for the Traffic Unit:

- 3 digital Pentax IST (camera with 6.1 megapixel with flash and memory card to allow photographs 20"x 30" for trials) cameras at \$800 each -- \$2,400.00
- 2 Siren/Light Control Boxes at \$410 each -- \$820.00

Done this 22nd day of December, 2005.


 Keith Schnarre
 Presiding Commissioner

ATTEST:


 Wendy S. Noren by HCS
 Clerk of the County Commission


 Karen M. Miller
 District I Commissioner

absent


 Skip Elkin
 District II Commissioner

496-2005

**BOONE COUNTY SHERIFF'S DEPARTMENT
INTER-OFFICE MEMORANDUM**

RECEIVED

DEC 09 2005

BOONE COUNTY AUDITOR

DATE: December 8, 2005
TO: June Pitchford and Karen F., Auditor's Office
FROM: Capt. Beverly Braun *Bev.*
SUBJECT: Addl. Traffic equipment

June and Karen, we have some equipment that we did not get with the Traffic grant, however, we do have some savings within our purchases this year. Could we use these savings to purchase the following:

~~3 tint meters (to check the windows in vehicles) @ \$189.00 ea. \$567.00~~

Will not purchase, per Sheriff Carey

3 digital Pentax IST (camera 6.1 megapixil with, flash & memory card to allow photographs 20" x 30" for trials) cameras @ \$800.00 ea. \$2400.00

~~3 global positioning devices (to plot coordinates when working accidents) @ \$200.00 ea. \$600.00~~

Will not purchase, per Sheriff Carey

2 siren/light control boxes @ \$410 ea., \$820.00
for a total of \$4,387.00. ✓

I am attaching a purchase order for the siren/light control boxes if you will approve. The other items will be purchased as soon as we have your approval.

Thank you for your consideration.

cc: Sheriff Carey

	0 = 0
<i>Items to Purchase</i>	
Cameras	2400.00
control boxes	820.00
TOTAL	3220.00

From: Dwayne Carey
To: Karen Frederick
Date: 12/22/2005 9:47:06 AM
Subject: Re: Additional Traffic Equipment

Karen,

I apologize for the confusion. I talked with Beverly, who is out sick with the flu, and she believed her numbers were correct. She tried to explain it to me, but I had a difficult time following her. Leasa is on Christmas vacation and I don't have access to how Beverly worked the numbers up. In talking with you, I realized we might have plugged a refund in that we can't actually spend. I think the easiest way to handle this would be to take the (3) GPS AND (3) tint meters out of this request. This totals \$1,167.00, which would take care of the shortcoming. This would leave us with the digital cameras and siren control boxes, which are must need items. If you have any questions, please call my cell phone at 228-4026.

Thank you and Merry Christmas,

Dwayne

>>> Karen Frederick 12/21/2005 12:44:38 PM >>>
Dwayne, Beverly, & Leasa:

When we originally received your request to purchase additional traffic equipment from remaining funds in Dept 2901 Class 9, the only items left to be purchased in this class were 4 mobile radios budgeted at \$3600. Therefore, when I reviewed the request, I used \$3600 as estimated cost. However, I just received purchase requisitions for the radios and it appears that total cost is significantly greater: $9184.52 + 1640 = 10,824.52$.

On 12/12/2005 receipt #4160 for \$2268 was recorded in 2901-91301 Computer Hardware. According to Leasa, this receipt is refund for items purchased in previous year. This receipt effectively reduces total expenditures and increases remaining balance. However, these funds are not available to spend. Actually, June and I discussed moving this receipt to a revenue account but decided to leave it since the dollar amount was not significant compared to class 9 as a whole. Nonetheless, because it is related to a previous year, this receipt does not increase funds available to spend in the current year.

Attached is spreadsheet showing remaining funds available to spend in 2901 Class 9, both original and current calculations. As it currently stands, the budget is approx \$1000 short of covering your request for additional equipment. Possible options:

1. Budget Revision from another class in 2901 to class 9
2. Revise request for additional equipment

Second reading for your equipment request is scheduled for Commission tomorrow, 12/22. Therefore, we will let Shawna know that this question needs to be resolved before final approval.

Please contact me at your earliest convenience and I'll be glad to work with you to resolve this in time for tomorrow's meeting. Thanks.

Karen

CC: kmiller@boonecountymo.org; kschnarre@boonecountymo.org;
selkin@boonecountymo.org

Dept. #	Class #	Equipment	Quantity Budgeted	Date Ordered	# Ordered	Budgeted	Amount Spent	Amount Remaining				
2901	91300	Cages	4	2/18/2005	4	\$1,800.00	\$1,040.00	\$760.00				
		Tasers	30		26	\$21,000.00	\$20,798.70	\$201.30				
		Tactical Vest	12			\$27,600.00	\$26,585.00	\$1,015.00				
		MP5 Rifle Racks	5	5/2/2005	5	\$2,000.00	\$1,476.75	\$523.25				
		Radar Unit	12	5/12/2005	11	\$19,140.00	\$18,391.50	\$748.50				
	91301	Mobile Data Terminals	24		26	\$201,600.00	\$198,184.45	\$3,415.55				
	92300	Replacement Mobile Radios	4			\$3,600.00	\$10,824.52	-\$7,224.52	waiting for contracts before purchasing			
		Light bars	4	2/18/2005	4	\$6,400.00	\$2,840.00	\$3,560.00				
	92400	Vehicles - Replacement	15			\$300,000.00	\$296,674.00	\$3,326.00				
		Total 2901				\$583,140.00	\$576,814.92	\$6,325.08				

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
 County of Boone } ea.

December Session of the October Adjourned

Term. 20 05

In the County Commission of said county, on the

22nd

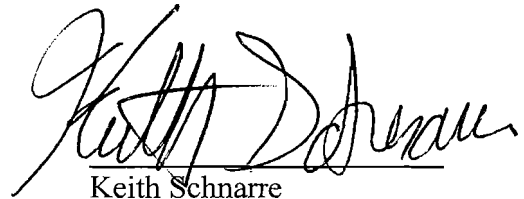
day of December

20 05

the following, among other proceedings, were had, viz:


Now on this day the County Commission of the County of Boone does approve the Office Lease with Heartland Investments, L.L.C. It is further ordered that the Presiding Commissioner be hereby authorized to sign said lease.

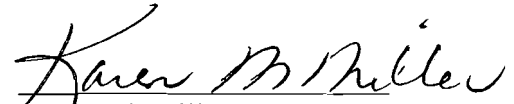
Done this 22nd day of December, 2005.



Keith Schnarre
 Presiding Commissioner

ATTEST:


 Wendy S. Noren by HCS
 Clerk of the County Commission



Karen M. Miller
 District I Commissioner

absent

 Skip Elkin
 District II Commissioner

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
County of Boone } ea.

December Session of the October Adjourned


Term. 20 05

In the County Commission of said county, on the 22nd day of December 20 05

the following, among other proceedings, were had, viz:

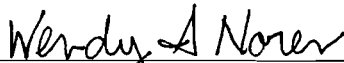
Now on this day the County Commission of the County of Boone does hereby approve the Agreement for Purchase of Homemaker/Personal Care and Respite Care Services with Pyramid Homemaker Services, Inc. It is further ordered that the Presiding Commissioner be hereby authorized to sign said agreement.

Done this 22nd day of December, 2005.


Keith Schiarre
Presiding Commissioner


Karen M. Miller
District I Commissioner

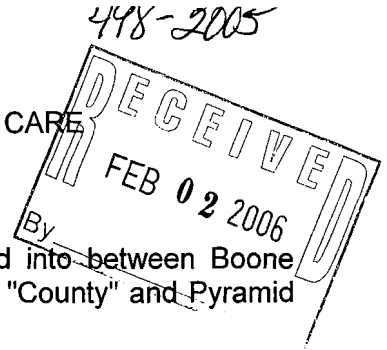
ATTEST:


Wendy S. Noren
Clerk of the County Commission by HCS

absent

Skip Elkin
District II Commissioner

AGREEMENT FOR PURCHASE OF HOMEMAKER/PERSONAL CARE
AND RESPITE CARE SERVICES



THIS AGREEMENT, dated the 22nd day of December, 2005, is entered into between Boone County, Missouri, through its County Commission, hereinafter referred to as the "County" and Pyramid Homemaker Services, Inc., hereinafter referred to as the "Provider".

WHEREAS, the County is desirous of providing homemaker/personal care and respite care services as stated in the application received by the Office of Community Services which is hereby incorporated by reference as fully as if herein set forth.

NOW THEREFORE, the County and Provider agree:

1. Provider shall provide homemaker/personal care and respite care services in accordance with the application of Provider that is on file in the Office of Community Services. Services purchased under this Agreement shall be provided to Boone County residents residing outside the City of Columbia and be provided to persons who meet the eligibility requirements established by the County.
2. Services specified in this Agreement shall be purchased from the contracting home health agency of the client's choice, using the fixed rate amount designated herein. No specific dollar allocation shall be made to any agency.
3. Provider agrees and understands that refusal to deliver services to any client authorized by the County may constitute a breach of this Agreement unless prior approval has been obtained from the County.
4. Provider shall conform at all times to applicable State Licensing Rules for Home Health agencies and/or Missouri Department of Health and Senior Services Standards for Homemaker/Personal Care and Respite Care Services.
5. Provider shall keep and maintain authorization documents; records of payments received from the County, and complete records to verify the delivery of services in accordance with the terms of this Agreement for a period of three (3) calendar years following expiration of this Agreement.
6. All such records and documents pertinent to this Agreement shall be subject at all times to inspection, review, or audit by County personnel and other personnel duly authorized by the County, subject to prior authorization by the patient.
7. If Provider is terminated from service with the County or goes out of business, all applicable records or copies thereof shall be furnished to the County at the time of termination or cessation of business.
8. County shall be permitted to conduct an on-site review of the program operated by the Provider, at a time mutually agreed upon by both parties.
9. Provider agrees that if a suit or claim is filed or made against County, or its officers or employees, based upon the Provider's performance under this agreement, or the County's selection of Provider as a contracting agency, or the County's failure to supervise or monitor Provider's performance under this agreement, Provider will defend the County against said suit or claim and pay whatever damages may be assessed against the County. Provider is entitled to use whatever defenses it has in law or fact against such claimants and County agrees to assist in the factual defenses raised by the Provider. County agrees that if a suit or claim is filed or made

against the Provider based upon the County's performance under this agreement, County will defend the Provider against said suit or claim and pay whatever damages may be assessed against the Provider. County is entitled to use whatever defenses it has in law or fact against such claimants and Provide agrees to assist in the factual defenses raised by the County.

10. Provider shall not assign the responsibility of this Agreement to another party without prior written approval of the County.
11. Payment shall be made only for those services specified in this Agreement as authorized by the County. Said authorization shall be furnished to the Provider in writing by the Division of Aging and shall include the name of the Provider, the period of authorization, the type of service, the level of service, and the client to be served.
12. The rate of reimbursement for the period January 1, 2006 through December 31, 2006 is \$3.65 per unit of service for homemaker/personal care services and \$3.19 per unit of service for respite care services. A unit of service is one-quarter hour. Reimbursement rates may be increased at the sole discretion of the County so as to ensure that reimbursement rates correspond with current state rates for these services.
13. The County shall pay the provider on the basis of monthly invoices, which shall be submitted to the Office of Community Services within fifteen days following the last day of each billing period on forms provided by the County for this purpose. Any invoices submitted after the fifteen day time period will be held over until the next month's billing cycle.
14. Supplemental invoices will be accepted for payment within 60 days of service delivery. Any supplemental invoices submitted later than 60 days after service delivery will not be reimbursed.
15. The Provider must submit the final invoice for reimbursement to the County no more than fifteen (15) days after the contract ends or is terminated.
16. This Agreement shall begin January 1, 2006 or the date on which the Agreement has been signed by both parties, whichever is later, and shall end on December 31, 2006.
17. Provider agrees that the County may at its sole option and with agreement of the Provider renew this Agreement for two consecutive one-year terms. Additionally, Provider agrees and understands that the County may require supplemental information to be submitted by Provider prior to any renewal of this Agreement.
18. This Agreement may be terminated by either party upon thirty (30) days notice, with or without cause; notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.
19. It is further understood and agreed that either party at any time may, with cause related to adequacy of performance, terminate this contract immediately by written notice.
20. If this Agreement is terminated for any reason, the obligation of the County shall be limited to payment for services provided in accordance with the Agreement prior to the date of termination. In all circumstances, County's obligation to make payments hereunder is subject to annual appropriations made available by County to fund its obligations to Provider.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
 County of Boone } ea.

December Session of the October Adjourned

Term. 20 05

In the County Commission of said county, on the

22nd

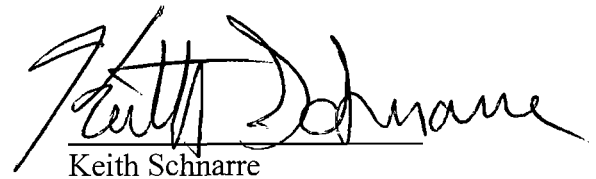
day of December

20 05

the following, among other proceedings, were had, viz:

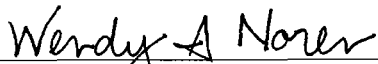
Now on this day the County Commission of the County of Boone does accept and acknowledge the Judgment, Order, and Decree Granting Petition for the Formation of a Transportation Development District for the Conley Road Transportation Development District pursuant to Section 238.216(6) of the Missouri Transportation Development District Act.

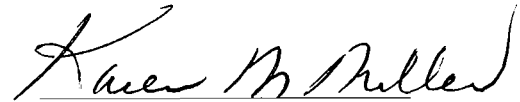
Done this 22nd day of December, 2005.



Keith Schnarre
 Presiding Commissioner

ATTEST:


 Wendy S. Noren by HCS
 Clerk of the County Commission



Karen M. Miller
 District I Commissioner

absent

 Skip Elkin
 District II Commissioner

499-2005

DEC 16 2005

VAN MATRE AND HARRISON, P.C.

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
1103 EAST BROADWAY, SUITE 101
POST OFFICE BOX 1017
COLUMBIA, MISSOURI 65201

CRAIG A. VAN MATRE
THOMAS M. HARRISON

EVERETT S. VAN MATRE
(1922-1998)

(573) 874-7777
TELECOPIER (573) 875-0017
E-MAIL craig@vanmatre.com

CARLA K. WILLIAMS
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GARRETT S. TAYLOR
ROBERT N. HOLLIS
KATHLEEN D. PITZER**

HARRIET F. FRANCIS, OF COUNSEL
*Admitted in Missouri and Illinois
**Admitted in Missouri, Illinois, and Washington, D.C.

December 16, 2005

Wendy Noren
Clerk Boone County Commission
Boone County Government Bldg.
801 E. Walnut Street
Columbia, Missouri 65201
Via Hand Delivered

Re: The Conley Road Transportation Development District ("District") / Official election results relating to imposition of TDD Tax

Dear Wendy:

Pursuant to section 238.216 of the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the "Act"), and a Judgment and Order granting a Petition for the formation of a Transportation Development District entered by the Honorable Gary Oxenhandler, Circuit Judge, on December 9, 2005, (the "Order"), the Board of Directors of the Conley Road Transportation Development District caused an election to be held among the owners of all real property located within the boundaries of the District regarding the creation of the proposed district, the development of the Transportation Projects (as defined in the Petition submitted to the court) and the imposition of a district-wide sales tax. I have enclosed a copy of the Order for your records.

I also enclose a certified copy of the Petition of Property Owner, which was filed and entered upon the records of the Boone County Circuit Court on December 16, 2005. Pursuant to Section 238.216(6) of the Act, we ask that you file this certified copy of the results and cause it to be spread upon the records of Boone County.

VAN MATRE AND HARRISON, P.C.

Wendy Noren, Boone County Clerk

December 16, 2005

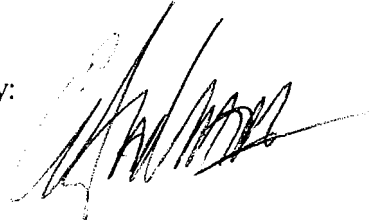
Page 2

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,

VAN MATRE AND HARRISON, P.C.

By:

A handwritten signature in black ink, appearing to be 'A. Matre', written over a horizontal line.

CAVM/tew
Enclosures

IN THE CIRCUIT COURT OF THE COUNTY OF BOONE, STATE OF MISSOURI

IN RE:)
 The formation of the Conley Road)
 Transportation Development District)
)
 BROADWAY CROSSINGS, L.L.C.,)
 a Missouri limited liability company,)
)
 and)
)
 BROADWAY CROSSINGS II, L.L.C.)
 a Missouri limited liability company,)
)
 and)
)
 RHL COLUMBIA DEVELOPMENT, L.P.,)
 a Missouri limited partnership,)
)
 Petitioners)
)
 vs.)
)
 MISSOURI HIGHWAYS AND TRANSPORTATION)
 COMMISSION,)
)
 and)
)
 THE CITY OF COLUMBIA, MISSOURI,)
)
 Respondents.)

Case No. 05BA-CV04103

**JUDGMENT, ORDER, AND DECREE
GRANTING PETITION FOR THE FORMATION OF A
TRANSPORTATION DEVELOPMENT DISTRICT**

The Court hereby enters this as its Judgment, Order, and Decree pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the "Act"), granting the Petitioners' Petition for the formation of a Transportation Development District known as the **Conley Road Transportation Development**

District (the "District"). Based on the record before the Court and the evidence adduced by Petitioners on December 8, 2005, the Court hereby makes the following determinations and findings of fact, i.e., the Court finds and determines that:

1. Petitioners (hereinafter referred to as the "Owners") constitute the only owners of the real property within the District.

2. The Owners of all of the property within the District have joined in the Petition for the formation of the District.

3. Respondent Missouri Highways and Transportation Commission (the "Commission") is the constitutional authority responsible for constructing and maintaining the Missouri highway system and is a necessary party under Section 238.207.4(2) of the Act, and Respondent City of Columbia, Missouri (the "City"), a constitutional charter city in which the proposed District will be located, is the "local transportation authority" within the meaning of Section 238.202.1(4) of the Act, and is a necessary party under Section 238.207.4(2) of the Act.

4. The record reflects that no objections to the Petition, timely or otherwise, have been filed.

5. The proposed District is composed of contiguous land and consists of land on which there are no residential structures, and there are no persons eligible to be registered voters residing within the proposed District. A legal description of the property to be included in the proposed District is attached as "Exhibit A" and shown on the map attached as "Exhibit B." The Court finds and determines that the District will not be an undue burden on the Owners of the property within the District and is not unjust or unreasonable.

6. The purpose of the District is to carry out and complete certain projects relating to transportation as set forth on "Exhibit C" hereto (collectively referred to as the "Transportation Projects").

7. The Petition is not legally defective and the Respondents have been duly served with process in this action and have filed their respective answers to the Petition.

8. The proposed District is neither illegal nor unconstitutional.

9. The District is established as a political subdivision pursuant to and in accordance with the Act for the sole purpose of funding the Transportation Projects and the payment of the Costs

(as defined in the Petitioners' Petition) through the imposition of a TDD Sales Tax (as hereinafter defined).

10. A portion of the proposed Transportation Projects is intended to be merged into the state highways and transportation system under the Commission's jurisdiction (the "State Portion of the Transportation Projects") and the other portions of the Transportation Projects are not intended to be so merged (the "Local Portion of the Transportation Projects") for which approval authority vests with the City subject to all necessary permitting requirements of the Commission for connections of the Local Portion of the Transportation Projects to the state highways and transportation system. The Commission has no direct interest in the Local Portion of the Transportation Projects.

11. The Transportation Projects will be funded from the proceeds of Transportation Development District bonds, notes, or other obligations (the "TDD Obligations") which will be secured by revenues resulting from the imposition by the District of a Transportation Development District Sales Tax (the "TDD Sales Tax") not to exceed one percent (1%). Furthermore:

a. TDD Obligations will not be issued in a principal amount greater than the amount required to fund the cost of the Transportation Projects, plus the cost of issuing the TDD Obligations and establishing reasonable reserves for the repayment thereof.

b. Under the Act, the District may impose a TDD Sales Tax upon approval of the qualified voters of the proposed District in increments of one-eighth of one percent up to a maximum of one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District imposing such tax.

c. The board of directors of the District will seek voter approval for the imposition of a TDD Sales Tax in a maximum amount which will not exceed one percent (1%) of all retail sales made in the District that are subject to taxation under Section 238.235.1(1) RSMo., to provide revenues sufficient to pay Transportation Project costs.

d. The TDD Sales Tax shall be imposed for such period of time as may be required to retire the TDD Obligations. In no event, however, shall the TDD Sales Tax extend beyond the period reasonably necessary to retire the TDD Obligations. The District shall not increase the TDD Sales Tax beyond one percent (1%); nor may it impose any other

(4)

tax, assessment, toll or charge whatsoever without the prior written consent of the City of Columbia and the Owners of all the real property located within the District.

e. All proceeds of the TDD Sales Tax collected on all transactions subject to a sales tax imposed in the District pursuant to Section 238.235 of the Act will be deposited into a special fund created for such purpose and applied solely to the payment of: (i) costs of the Transportation Projects (including all costs incurred pursuant to Sections 238.240, 238.245, and 238.247 of the Act); (ii) the costs of filing and defending the Petition as authorized by Section 238.217 of the Act; (iii) payment of the principal of, premium (if any), and interest on the TDD Obligations; and (iv) the District's reasonable and actual cost of administering, collecting, enforcing, and operating the District as provided in the Act, including (but not limited to) costs incurred pursuant to Sections 238.222, 238.252, 238.255, and 238.272 of the Act.

f. Except for costs of enforcing the collection of the TDD Sales Tax, the District shall not incur more than Two Hundred Fifty Thousand Dollars (\$250,000.00) in costs pursuant to subparagraph 11, e, (iv) above, in either the first two (2) full fiscal years after the date of entry of this Judgment and Order authorizing the formation of the District, or more than One Hundred Twenty-Five Thousand Dollars (\$125,000.00) in such costs (or such lesser amount as may be agreed to pursuant to written agreement between the District and the City) in any fiscal year thereafter without the prior written consent of the City's Finance Director and City Manager (but without further action by the City Council of the City); provided that: (1) such consent shall not be unreasonably withheld if the District demonstrates that the expenditures serve a legitimate District purpose; (2) such expenses shall be deemed approved if the Finance Director and the City Manager do not specifically disapprove of such expenses in writing within thirty (30) calendar days following the delivery of information by the District evidencing that the expenditures serve a legitimate District purposes; and (3) the District shall not be obligated to reimburse the City for costs the City incurs pursuant to any such request.

12. The District will not incur any liabilities or debt or issue any obligations other than the TDD Obligations that are issued to finance or refinance the Transportation Projects. The District

will maintain its existence until all TDD Obligations have been paid in full, at which time the District, through its board of directors, will take and diligently pursue to conclusion all such actions as shall be necessary under Section 238.275 of the Act to abolish the District.

13. The District is properly, duly, and lawfully organized.

14. The proposed funding method and mechanism is neither illegal nor unconstitutional and is certified for qualified voter approval pursuant to Section 238.210.2 of the Act.

Based on the above findings of fact and conclusions of law, it is the JUDGMENT, ORDER, AND DECREE of this Court that:

A. The District is hereby organized;

B. The board of directors of the District shall be composed of five (5) members. The terms of office of the initial members of the board of directors of the District shall be staggered, the two members receiving the highest number of votes will have an initial three-year term, the two members receiving the next highest number of votes will have an initial two-year term, and the member receiving the fewest number of votes will have an initial one-year term. After the initial terms, all members of the board of directors of the District shall be elected for three-year terms. The Commission may appoint one or more advisors to the board of directors of the District as provided in Section 238.220.4 of the Act. The City may appoint at least one but not more than three advisors to the board of directors of the District as provided in Section 238.220.5 of the Act;

C. The District shall keep accurate records of revenues received and costs incurred, and such records shall be open to inspection by the City at all reasonable times;

D. The District shall arrange for and undertake the construction of the Transportation Projects and exercise all powers granted it under the Act, as limited by Exhibit E to this Decree;

E. Before construction or funding of the State Portion of the Transportation Projects, the District shall submit the State Portion of the Transportation Projects, together with the proposed plans and specifications, to the Commission for its approval. Upon submission of the State Portion of the Transportation Projects, if the Commission finds that the State Portion of the Transportation Projects will improve or is a necessary or desirable extension of the state highways and transportation system, the Commission may approve the State Portion of the Transportation Projects, subject to the District making any revisions in the plans and specifications required by the Commission, and the District

and the Commission may enter into a mutually satisfactory agreement regarding development and future maintenance of the State Portion of the Transportation Projects if the Commission determines same to be necessary;

F. The City shall be designated as the "local transportation authority" within the meaning of the Act for the Local Portion of the Transportation Projects, subject to all necessary permitting requirements of the Commission for connections of the Local Portion of the Transportation Projects to the state highways and transportation system, and subject to the District and the City developing the Local Portion of the Transportation Projects in a manner compatible with the future development of the state highway system;

G. Upon their completion, all portions of the Transportation Projects which are not within the control and jurisdiction of the Commission shall be and remain under the control and jurisdiction of the City; and

H. The District shall not exercise its power of condemnation or eminent domain except in accordance with the procedures described on Exhibit E, which is incorporated in and as a part of this Decree.

THEREFORE, it is further the JUDGMENT, ORDER, AND DECREE of this Court that:

(1) pursuant to Section 238.220.2(1), a meeting of the owners of record of the property within the District is hereby called at 9:00 a.m. on December 16, 2005, in the Mezzanine Conference Room, City Offices, 701 East Broadway, Columbia, Missouri, to elect a chairman and secretary of the meeting to conduct the election of the initial directors of the District;

(2) following adoption by the board of directors of the District of a resolution imposing a sales tax and submitting a proposal relating thereto to the qualified voters of the District, the funding method for the Transportation Projects is certified for voter approval wherein the Owners shall submit to the Boone County Circuit Clerk a unanimous petition (substantially in the form set forth as "Exhibit D" hereto) approving the imposition of a sales tax not to exceed one percent (1%) by the District for a period no longer than that period of time reasonably required to retire the TDD Obligations, each Owner receiving one vote per acre owned;

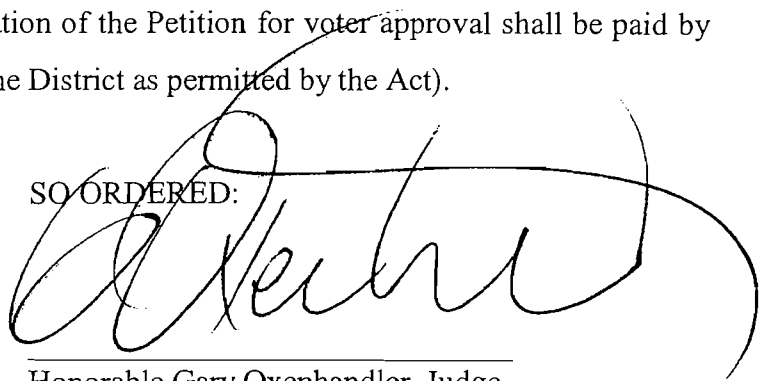
(3) the Boone County Circuit Clerk shall verify the authenticity of all signatures on the unanimous petition by certifying that all signatures have been duly notarized;



(4) the results of the election shall be entered upon the records of this Circuit Court and a certified copy shall be filed with the City Clerk's office to be reflected in the records of the City of Columbia; and

(5) the costs of filing and defending the petition and all publication and incidental costs incurred in obtaining this Court's certification of the Petition for voter approval shall be paid by Petitioners (subject to reimbursement by the District as permitted by the Act).

SO ORDERED:

A large, stylized handwritten signature in black ink, appearing to read 'Gary Oxenhandler', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Honorable Gary Oxenhandler, Judge
Division II, Circuit Court of Boone County, MO

Dated: 12.9.5

**EXHIBIT A
TO
JUDGMENT, ORDER, AND DECREE
GRANTING PETITION FOR THE FORMATION OF
CONLEY ROAD TRANSPORTATION DEVELOPMENT DISTRICT
BROADWAY CROSSINGS, L.L.C., BROADWAY CROSSINGS, II, L.L.C.,
AND RHL COLUMBIA DEVELOPMENT, L.P., PETITIONERS, AND
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION,
AND THE CITY OF COLUMBIA, RESPONDENTS**

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("B-1 Tract")

Tract 1A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("B-2 Tract")

Tract 2A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("RHL Tract")

Tract 3A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.



**EXHIBIT B
TO
JUDGMENT, ORDER, AND DECREE
GRANTING PETITION FOR THE FORMATION OF
THE CONLEY ROAD TRANSPORTATION DEVELOPMENT DISTRICT
BROADWAY CROSSINGS, L.L.C., BROADWAY CROSSINGS, II, L.L.C.,
AND RHL COLUMBIA DEVELOPMENT, L.P., PETITIONERS, AND
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION,
AND THE CITY OF COLUMBIA, RESPONDENTS**

Map

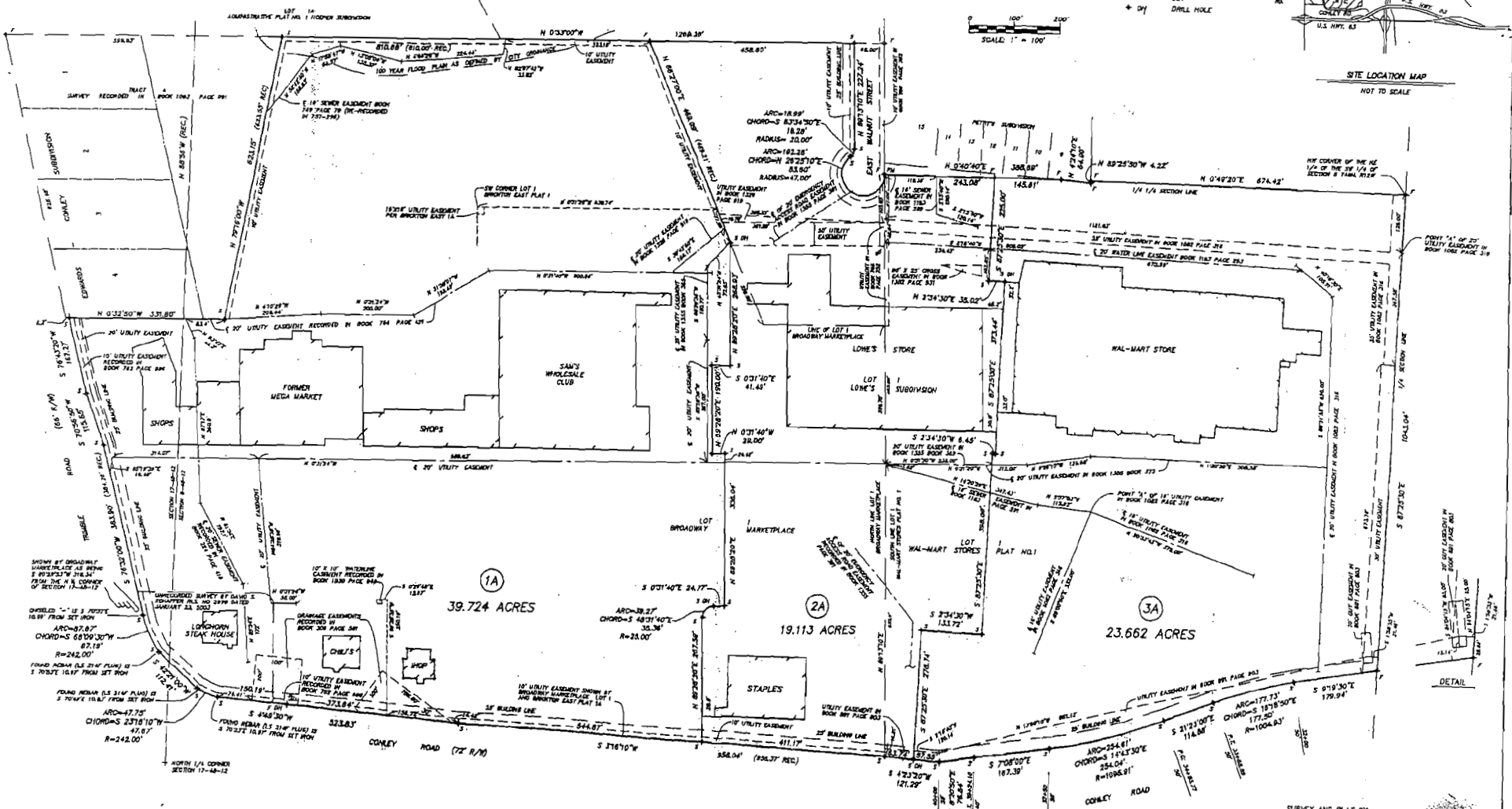
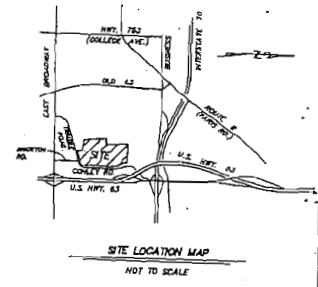
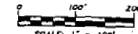


ADMINISTRATIVE PLAT

LOT 1 BROADWAY MARKETPLACE LOT 1 LOWE'S SUBDIVISION LOT 1 WAL-MART STORES PLAT NO. 1

BEARINGS ARE REFERENCED TO
 THE LINES OF WAL-MART STORES
 PLAT NO. 1.

MONUMENT LEGEND	
+	IRON FOUND SET
+	SET
+	DRILL HOLE



APPROVED TO BE SUBDIVIDED AS PER SECTION 26.01 OF THE
 SUBDIVISION REGULATIONS OF THE CITY OF COLUMBIA, MISSOURI.

Paul B. Patterson August 29, 2005
 DIRECTOR OF PUBLIC WORKS DATE
 LONELL B. PATTERSON

SURVEY AND PLAT BY
 ENGINEERING SURVEYS & SERVICES

Timothy J. Reed
 TIMOTHY J. REED
 PROFESSIONAL LAND SURVEYOR
 LS 2088

RA

B-53

**EXHIBIT C
TO
JUDGMENT, ORDER, AND DECREE
GRANTING PETITION FOR THE FORMATION OF
THE CONLEY ROAD TRANSPORTATION DEVELOPMENT DISTRICT
BROADWAY CROSSINGS, L.L.C., BROADWAY CROSSINGS, II, L.L.C.,
AND RHL COLUMBIA DEVELOPMENT, L.P., PETITIONERS, AND
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION,
AND THE CITY OF COLUMBIA, RESPONDENTS**

Transportation Projects to be Constructed by the District

<u>Item No.</u>	<u>Description</u>
1	All improvements necessary to extend Conley Road north and west to intersect with Business Loop 70 East;
2	Construction of bridge, bridge abutments, and related structures for roadway bridge over Hinkson Creek as designed by Respondent Missouri Highways and Transportation Commission required in order to connect Conley Road to Business Loop 70 East;
3	Construction of extension and re-routing of Business Loop 70 East to connect to Conley Road;
4	Redesign of Columbia Country Club golf course including removal of portions of fairways, greens, and tees in order to accommodate design and construction of connection of Conley Road to Business Loop 70 East;
5	Acquisition of real property adjacent to and required for redesign and construction of replacement greens, tees, and fairways for Columbia Country Club in order to construct new portions of said golf course following acquisition of right of way needed for the extension of Conley Road to connect to Business Loop 70 East;
6	Acquisition of a portion of Missouri Highways and Transportation Commission land and facilities located on Conley Road in order to facilitate and make possible the redesign of the Columbia Country Club golf course and appurtenant improvements;
7	Acquisition of additional real estate north and west of Missouri Highways and Transportation Commission site in order to acquire sufficient real estate for roadway easements, bridge abutments, and appurtenant areas for Conley Road, Business Loop 70 East, bridge, and drainage facilities;

EXHIBIT C
TO JUDGMENT, ORDER, AND DECREE
(continued)

<u>Item No.</u>	<u>Description</u>
8	Acquisition of six (6) acre tract from Bernice Wanless Trust required for surface water detention and retention facility immediately west of proposed District in order to construct thereon drainage facilities required to support and avoid environmental damage from related parking lots, roadways, and transportation facilities described herein;
9	Construction of pedways and trails appurtenant to Hinkson Creek north, west and south of District;
10	Widening of Conley Road and construction of new access points, drives, turn lanes, traffic signals, and related transportation improvements needed to connect Conley Road and Business Loop 70 to Highway 63 access;
11	Construction of right-in/right-out islands, curbing, medians, turn lanes, and related improvements for Conley Road and Business Loop 70 East and appurtenant drives, driveways, and access points;
12	Construction of intersections, grade changes, road realignments, traffic signalization, and other related transportation structures comprehended by the foregoing;
13	Construction of surface water drainage structures made reasonably necessary by the roadway improvements described above and by the extension and construction of Conley Road and Business Loop 70 East, including all environmental protection measures required in order to avoid environmental damage as a result of surface water drainage from roads, roadway ditches, intersections, and transportation improvements, including mitigation costs, retaining walls, channel preservation devices, bridges, abutments, and related structures;
14	Payments for necessary rights-of-way acquisitions, easements, aesthetic improvements, signage, traffic signals, and specialty lighting reasonably required in order to implement the plans of Respondent Missouri Highways and Transportation Commission for the extension and construction of Conley Road to Business Loop 70 East and as they are related to the above-described roadways and transportation improvements;

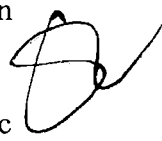


EXHIBIT C
TO JUDGMENT, ORDER, AND DECREE
(continued)

- | <u>Item No.</u> | <u>Description</u> |
|-----------------|---|
| 15 | Construction of additional traffic-related improvements, including sidewalks, pedways, traffic signals, traffic islands, median improvements, and turn lanes adjacent to and within the District. |
| 16 | Acquisition of rights of way and construction of curb cuts and other access points around perimeter of District as required by the City of Columbia. |
| 17 | Payments for necessary rights-of-way acquisitions, easements, construction of pedways, sidewalks, surface water drainage facilities, and all other necessary construction of roadway, aesthetic improvements, signage, landscaping and buffering, traffic signals, and specialty lighting reasonably required in order to connect I-70 Drive SE to Conley Road. |
| 18 | Construction of parking lots, medians, islands, lighting standards, landscaping, and repair and replacement of parking lots in the District. |
| 19 | Payment of and reimbursement for necessary civil engineering fees, professional fees, permit costs, and costs of obtaining federal and state licenses and permits reasonably required for the construction of the foregoing traffic related improvements; and |
| 20 | Payment of and reimbursement for all other professional fees, licenses, and costs reasonably related to and authorized to be paid in connection with the construction of the foregoing improvements, as well as the establishment and operation of the District, and as permitted by the Act. |



**EXHIBIT D
TO
JUDGMENT, ORDER, AND DECREE
GRANTING PETITION FOR THE FORMATION OF
THE CONLEY ROAD TRANSPORTATION DEVELOPMENT DISTRICT
BROADWAY CROSSINGS, L.L.C., BROADWAY CROSSINGS, II, L.L.C.,
AND RHL COLUMBIA DEVELOPMENT, L.P., PETITIONERS, AND
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION,
AND THE CITY OF COLUMBIA, RESPONDENTS**

Petition of Property Owners

The undersigned entities constitute the only owners of Real Property within the area described on Exhibit 1 hereto, and hereby approves of the formation of a transportation development district within said area to be known as the "Conley Road Transportation Development District" (the "District") for the purposes of developing the following Transportation Projects:

All improvements necessary to extend Conley Road north and west to intersect with Business Loop 70 East;

Construction of bridge, bridge abutments, and related structures for roadway bridge over Hinkson Creek as designed by Respondent Missouri Highways and Transportation Commission required in order to connect Conley Road to Business Loop 70 East;

Construction of extension and re-routing of Business Loop 70 East to connect to Conley Road;

Redesign of Columbia Country Club golf course including removal of portions of fairways, greens, and tees in order to accommodate design and construction of connection of Conley Road to Business Loop 70 East;

Acquisition of real property adjacent to and required for redesign and construction of replacement greens, tees, and fairways for Columbia Country Club in order to construct new portions of said golf course following acquisition of right of way needed for the extension of Conley Road to connect to Business Loop 70 East;

Acquisition of a portion of Missouri Highways and Transportation Commission land and facilities located on Conley Road in order to



facilitate and make possible the redesign of the Columbia Country Club golf course and appurtenant improvements;

Acquisition of additional real estate north and west of Missouri Highways and Transportation Commission site in order to acquire sufficient real estate for roadway easements, bridge abutments, and appurtenant areas for Conley Road, Business Loop 70 East, bridge, and drainage facilities;

Acquisition of six (6) acre tract from Bernice Wanless Trust required for surface water detention and retention facility immediately west of proposed District in order to construct thereon drainage facilities required to support and avoid environmental damage from related parking lots, roadways, and transportation facilities described herein;

Construction of pedways and trails appurtenant to Hinkson Creek north, west and south of District;

Widening of Conley Road and construction of new access points, drives, turn lanes, traffic signals, and related transportation improvements needed to connect Conley Road and Business Loop 70 to Highway 63 access;

Construction of right-in/right-out islands, curbing, medians, turn lanes, and related improvements for Conley Road and Business Loop 70 East and appurtenant drives, driveways, and access points;

Construction of intersections, grade changes, road realignments, traffic signalization, and other related transportation structures comprehended by the foregoing;

Construction of surface water drainage structures made reasonably necessary by the roadway improvements described above and by the extension and construction of Conley Road and Business Loop 70 East, including all environmental protection measures required in order to avoid environmental damage as a result of surface water drainage from roads, roadway ditches, intersections, and transportation improvements, including mitigation costs, retaining walls, channel preservation devices, bridges, abutments, and related structures;

Payments for necessary rights-of-way acquisitions, easements, aesthetic improvements, signage, traffic signals, and specialty lighting

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reasonably required in order to implement the plans of Respondent Missouri Highways and Transportation Commission for the extension and construction of Conley Road to Business Loop 70 East and as they are related to the above-described roadways and transportation improvements;

Construction of additional traffic-related improvements, including sidewalks, pedways, traffic signals, traffic islands, median improvements, and turn lanes adjacent to and within the District.

Acquisition of rights of way and construction of curb cuts and other access points around perimeter of District as required by the City of Columbia.

Payments for necessary rights-of-way acquisitions, easements, construction of pedways, sidewalks, surface water drainage facilities, and all other necessary construction of roadway, aesthetic improvements, signage, landscaping and buffering, traffic signals, and specialty lighting reasonably required in order to connect I-70 Drive SE to Conley Road.

Construction of parking lots, medians, islands, lighting standards, landscaping, and repair and replacement of parking lots in the District.

Payment of and reimbursement for necessary civil engineering fees, professional fees, permit costs, and costs of obtaining federal and state licenses and permits reasonably required for the construction of the foregoing traffic related improvements; and

Payment of and reimbursement for all other professional fees, licenses, and costs reasonably related to and authorized to be paid in connection with the construction of the foregoing improvements, as well as the establishment and operation of the District, and as permitted by the Act.



The undersigned further approve of (hereby vote and respond in the affirmative to) the following proposition:

"Shall the Conley Road Development District impose a transportation development district-wide sales tax at the rate of _____ percent (___%) for such period of time as may be required to retire any bonds, notes, or other obligations that are issued to finance the above-described Transportation Projects?"

BROADWAY CROSSINGS, L.L.C.,
a Missouri limited liability company, ("Owner")

By: _____
_____, Member and Authorized Agent

BROADWAY CROSSINGS II, L.L.C.,
a Missouri limited liability company, ("Owner")

By: _____
_____, Member and Authorized Agent

RHL COLUMBIA DEVELOPMENT, L.P.,
a Missouri limited partnership, ("Owner")

By: _____
_____, General Partner

State of Missouri)
 (ss.
County of Boone)

On this _____ day of _____, 20____, before me personally appeared _____, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a member and authorized agent of Broadway Crossings, L.L.C., a Missouri limited liability company, that he executed this document on behalf of said limited liability company, as the free act and deed of said limited liability company, and pursuant to the authority vested in him to execute this document by the members of said limited liability company, that the foregoing document is binding in all respects upon said limited liability company, and that said limited liability company is duly empowered by its operating agreement to enter into this document.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal at my office in _____, Missouri, the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
 (ss.
County of Boone)

On this _____ day of _____, 20____, before me personally appeared _____, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a member and authorized agent of Broadway Crossings II, L.L.C., a Missouri limited liability company, that he executed this document on behalf of said limited liability company, as the free act and deed of said limited liability company, and pursuant to the authority vested in him to execute this document by the members of said limited liability company, that the foregoing document is binding in all respects upon said limited liability company, and that said limited liability company is duly empowered by its operating agreement to enter into this document.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal at my office in _____, Missouri, the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
 (ss.
County of Boone)

On this _____ day of _____, 20____, before me personally appeared _____, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is the general partner of RHL Columbia Development, L.P., a Missouri limited partnership, that he executed this document on behalf of said partnership as the free act and deed of said partnership, and pursuant to the authority vested in him to execute this document by the partners of said partnership, that the foregoing document is binding in all respects upon said partnership, and that said partnership is duly empowered by its partnership agreement to enter into this document.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal at my office in _____, Missouri, the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

**EXHIBIT 1
TO THE FORM OF PETITION**

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("B-1 Tract")

Tract 1A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("B-2 Tract")

Tract 2A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("RHL Tract")

Tract 3A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.



PETITION OF PROPERTY OWNERS

The undersigned entities constitute the only owners of Real Property within the area described on Exhibit 1 hereto; and hereby approves of the formation of a transportation development district within said area to be known as the "Conley Road Transportation Development District" (the "District") for the purposes of developing the following Transportation Projects:

All improvements necessary to extend Conley Road north and west to intersect with Business Loop 70 East;

Construction of bridge, bridge abutments, and related structures for roadway bridge over Hinkson Creek as designed by Respondent Missouri Highways and Transportation Commission required in order to connect Conley Road to Business Loop 70 East;

Construction of extension and re-routing of Business Loop 70 East to connect to Conley Road;

Redesign of Columbia Country Club golf course including removal of portions of fairways, greens, and tees in order to accommodate design and construction of connection of Conley Road to Business Loop 70 East;

Acquisition of real property adjacent to and required for redesign and construction of replacement greens, tees, and fairways for Columbia Country Club in order to construct new portions of said golf course following acquisition of right of way needed for the extension of Conley Road to connect to Business Loop 70 East;

Acquisition of a portion of Missouri Highways and Transportation Commission land and facilities located on Conley Road in order to facilitate and make possible the redesign of the Columbia Country Club golf course and appurtenant improvements;

Acquisition of additional real estate north and west of Missouri Highways and Transportation Commission site in order to acquire sufficient real estate for roadway easements, bridge abutments, and appurtenant areas for Conley Road, Business Loop 70 East, bridge, and drainage facilities;

Acquisition of six (6) acre tract from Bernice Wanless Trust required for surface water detention and retention facility immediately west of proposed District in order to construct thereon drainage facilities

required to support and avoid environmental damage from related parking lots, roadways, and transportation facilities described herein;

Construction of pedways and trails appurtenant to Hinkson Creek north, west and south of District;

Widening of Conley Road and construction of new access points, drives, turn lanes, traffic signals, and related transportation improvements needed to connect Conley Road and Business Loop 70 to Highway 63 access;

Construction of right-in/right-out islands, curbing, medians, turn lanes, and related improvements for Conley Road and Business Loop 70 East and appurtenant drives, driveways, and access points;

Construction of intersections, grade changes, road realignments, traffic signalization, and other related transportation structures comprehended by the foregoing;

Construction of surface water drainage structures made reasonably necessary by the roadway improvements described above and by the extension and construction of Conley Road and Business Loop 70 East, including all environmental protection measures required in order to avoid environmental damage as a result of surface water drainage from roads, roadway ditches, intersections, and transportation improvements, including mitigation costs, retaining walls, channel preservation devices, bridges, abutments, and related structures;

Payments for necessary rights-of-way acquisitions, easements, aesthetic improvements, signage, traffic signals, and specialty lighting reasonably required in order to implement the plans of Respondent Missouri Highways and Transportation Commission for the extension and construction of Conley Road to Business Loop 70 East and as they are related to the above-described roadways and transportation improvements;

Construction of additional traffic-related improvements, including sidewalks, pedways, traffic signals, traffic islands, median improvements, and turn lanes adjacent to and within the District.

Acquisition of rights of way and construction of curb cuts and other access points around perimeter of District as required by the City of Columbia.

Payments for necessary rights-of-way acquisitions, easements, construction of pedways, sidewalks, surface water drainage facilities, and all other necessary construction of roadway, aesthetic improvements, signage, landscaping and buffering, traffic signals, and specialty lighting reasonably required in order to connect I-70 Drive SE to Conley Road.

Construction of parking lots, medians, islands, lighting standards, landscaping, and repair and replacement of parking lots in the District.

Payment of and reimbursement for necessary civil engineering fees, professional fees, permit costs, and costs of obtaining federal and state licenses and permits reasonably required for the construction of the foregoing traffic related improvements; and

Payment of and reimbursement for all other professional fees, licenses, and costs reasonably related to and authorized to be paid in connection with the construction of the foregoing improvements, as well as the establishment and operation of the District, and as permitted by the Act.

The undersigned further approve of (hereby vote and respond in the affirmative to) the following proposition:

"Shall the Conley Road Development District impose a transportation development district-wide sales tax at the rate of one-half percent (½%) for such period of time as may be required to retire any bonds, notes, or other obligations that are issued to finance the above-described Transportation Projects?"

BROADWAY CROSSINGS, L.L.C.,
a Missouri limited liability company, ("Owner")
By: *E. Stanley Kroenke*
E. Stanley Kroenke, Member and Authorized Agent

State of Missouri)
(ss.
County of Boone)

On this 16th day of December, 2005, before me personally appeared E. Stanley Kroenke, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a member and authorized agent of Broadway Crossings, L.L.C., a Missouri limited liability company, that he executed this document on behalf of said limited liability company, as the free act and deed of said limited liability company, and pursuant to the authority vested in him to execute this document by the members of said limited liability company, that the foregoing document is binding in all respects upon said limited liability company, and that said limited liability company is duly empowered by its operating agreement to enter into this document.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal at my office in Columbia, Missouri, the day and year first above written.

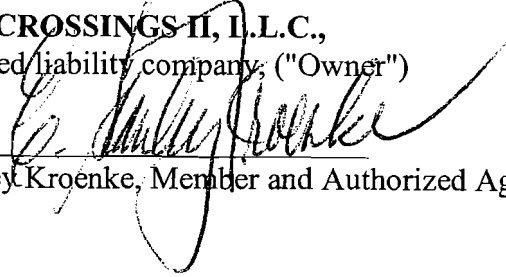
TERESA E. WELLS
Notary Public - Notary Seal
Boone County - State of Missouri
My Commission Expires October 21, 2008

Teresa E. Wells
Teresa E. Wells, Notary Public
Commissioned in Boone County, MO

My commission expires 10/21/08.

Signature Page to Petition of Property Owners

BROADWAY CROSSINGS II, L.L.C.,
a Missouri limited liability company, ("Owner")

By: 
E. Stanley Kroenke, Member and Authorized Agent

State of Missouri)
County of Boone) (ss.

On this 16th day of December, 2005, before me personally appeared E. Stanley Kroenke, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a member and authorized agent of Broadway Crossings II, L.L.C., a Missouri limited liability company, that he executed this document on behalf of said limited liability company, as the free act and deed of said limited liability company, and pursuant to the authority vested in him to execute this document by the members of said limited liability company, that the foregoing document is binding in all respects upon said limited liability company, and that said limited liability company is duly empowered by its operating agreement to enter into this document.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal at my office in Columbia, Missouri, the day and year first above written.

TERESA E. WELLS
Notary Public - Notary Seal
Boone County - State of Missouri
My Commission Expires October 21, ~~2009~~

Teresa E. Wells, Notary Public
Commissioned in Boone County, MO

My commission expires 10/21/08.

Signature Page to Petition of Property Owners

RHL COLUMBIA DEVELOPMENT, L.P.,
a Missouri limited partnership, ("Owner")

By: _____
Michael Staenberg, General Partner

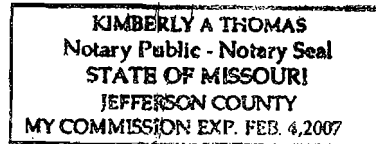
State of Missouri)
(ss.
County of St. Louis)

On this 16th day of December, 2005, before me personally appeared Michael Staenberg, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is the general partner of RHL Columbia Development, L.P., a Missouri limited partnership, that he executed this document on behalf of said partnership as the free act and deed of said partnership, and pursuant to the authority vested in him to execute this document by the partners of said partnership, that the foregoing document is binding in all respects upon said partnership, and that said partnership is duly empowered by its partnership agreement to enter into this document.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal at my office in St. Louis, Missouri, the day and year first above written.

Kimberly A Thomas
_____, Notary Public
Commissioned in St. Louis County, MO

My commission expires 2/4/2007.



**EXHIBIT 1
TO PETITION OF PROPERTY OWNERS**

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("B-1 Tract")

Tract 1A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("B-2 Tract")

Tract 2A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.

Legal Description of Tract Owned by Broadway Crossings, L.L.C. ("RHL Tract")

Tract 3A of the Administrative Plat of Lot 1 Broadway Marketplace, Lot 1 Lowe's Subdivision, and Lot 1 Wal-Mart Stores Plat as shown and depicted on the Survey and Plat filed September 3, 2003, in Book 2339 at Page 81 of the Boone County Records.