

Contract# 1804382
Vendor# 000054297

CONTRACT NUMBER: 2018-0108-CSD/DD

GRANTEE DUNS NUMBER: 053297131

VENDOR NUMBER: 000054297

GRANT AGREEMENT

This grant agreement is between the New Mexico Department of Transportation (Department) and the Santa Fe County (Grantee), collectively referred to as "the Parties." The Department and the Grantee agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following projects:
Supervised Probation Expansion – Santa Fe County DWI Program, Project No. 18-AL-64-P05, \$60,000.
2. **Scope of Work.** The Grantee shall perform the professional services stated in Exhibit A.
3. **Payment.** To be reimbursed for eligible expenses, the Grantee must submit timely, properly prepared reimbursement requests as provided in the Department's Traffic Safety Bureau Financial Management Manual June 22, 2016. The Grantee acknowledges that the Department will not pay for any expenses incurred prior to both Parties signing the agreement, after termination of the agreement, or in excess of the amount of the award noted in section 1. The Grantee must submit its final reimbursement request no later than thirty days after termination of this agreement, unless otherwise approved by the Department.
4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this agreement. The Grantee shall record costs incurred, services rendered and payment received, and shall maintain these financial records during the agreement and for three years from the date of submission of the final reimbursement request. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the term of this agreement and for three years from the date of submission of the final reimbursement request. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty days of written notice.
5. **Officials Not to Benefit.** The Parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee or tribal council member, in that person's individual capacity, will benefit from this agreement.

6. Termination. The Department may terminate this agreement for any reason, by giving the Grantee thirty days written notice. The Grantee may only terminate this agreement based on the Department's uncured, material breach of the agreement. On receipt of a "Notice of Cancellation," the Grantee shall suspend work unless otherwise directed by the Department in writing. The Parties acknowledge that termination will not nullify obligations incurred prior to termination.

7. Appropriations. The Grantee acknowledges that:

- a. this agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;
- b. if sufficient appropriations and authorizations are not made, this agreement will terminate upon written notice by the Department to the Grantee; and
- c. the Department will not expend any funds until they are approved for expenditure, and the Department's determination as to whether approval has been granted will be final.

8. Compliance with Law. The Grantee, its employees, agents and contractors, shall comply with the following:

- a. Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. Section 21;
- b. all federal and state laws, rules, and regulations, and executive orders of the Governor of the state of New Mexico pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, Sections 28-1-1 through 28-1-15 (In accordance with such, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age or handicap, will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this agreement. If the Grantee it is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation);
- c. state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 through 52-1-70, and related regulations;
- d. 2 C.F.R. 200, Subpart F - Audit Requirements, Sections 200.500 - 200.521; and
- e. those sections in Exhibit B labeled "applies to subrecipients as well as states."

9. Notices. For a notice under this agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail return receipt requested and postage prepaid, fax or e-mail; and be addressed as follows:

to NMDOT at:
New Mexico Dept. of Transportation
Attn: Traffic Safety Division
P.O. Box 1149
Santa Fe, NM 87504

to the Grantee at:
Santa Fe County DWI Program
Attn: Lupe Sanchez
2052 Galisteo St., Suite C
Santa Fe, NM 87504

10. Severability. The Parties intend that if any provision of this agreement is held to be unenforceable, the rest of the agreement will remain in effect as written.

11. Tort Claims. The Parties intend that (1) immunity from liability for tortious conduct under NMSA 1978, Section 41-4-4(A) will apply to all conduct relating to this agreement, (2) only the waivers of immunity from liability under NMSA 1978, Sections 41-4-4 through 41-4-12 will apply, and (3) this agreement does not waive immunity from liability for tortious conduct relating to this agreement of any employee of the Department or the Grantee.

12. Jurisdiction and Venue. The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.

13. Project Responsibility. The Grantee acknowledges that it bears sole responsibility for performing the services referred to in section 2.

14. Term. This agreement takes effect upon signature of all Parties. If the Grantee does not deliver the signed agreement to the Department within sixty days of the Department's signature, the agreement will be voidable by the Department. The agreement terminates at midnight on September 30, 2018, unless earlier terminated as provided in section 6 or section 7.

15. Applicable Law. The laws of the state of New Mexico, without giving effect to its choice of law principles, govern all adversarial proceedings arising out of this agreement.

16. Amendment. No amendment of this agreement will be effective unless it is in writing and signed by the Parties.

17. No Third-party Beneficiary. This agreement does not confer any rights or remedies on anyone other than the Department and the Grantee.

18. Merger. This agreement constitutes the entire understanding between the Parties with respect to the subject matter of the agreement and supersedes all other agreements, whether written or oral, between the Parties, except that this agreement does not supersede the Grantee's

rights under any other grant agreement.

19. Disadvantaged Business Enterprise. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Each party is signing this agreement on the date stated opposite that party's signature.

Date: 10/3, 2017 By: [Signature]
Cabinet Secretary or Designee

Date: Oct 2, 2017 By: [Signature]
Katherine Miller, County Manager

Approved as to form and legal sufficiency.

Date: 09/13, 2017 By: [Signature]
Assistant General Counsel
Department of Transportation

Approved as to form and legal sufficiency.

Date: Sept 20, 2017 By: [Signature]
General Counsel
Santa Fe County

Exhibit A

SCOPE OF WORK, TRAINING, REIMBURSEMENT AND REPORTING

1. Scope of Work. Generally, the Grantee shall provide one full-time equivalent (FTE), scheduled for a minimum of forty hours per week, whose time is dedicated exclusively to supervising and monitoring eligible DWI offenders ,i.e. those who in the County's DWI Compliance Monitoring/Tracking Program.

Specifically the Grantee shall provide the following:

- (1) Identify, and provide enhanced supervision to, high-risk first offenders.
- (2) Utilize court-approved risk and needs assessment, and review blood alcohol concentration at the time of arrest.
- (3) Assess, refer and monitor treatment services to determine that the services are appropriate for offenders.
- (4) Supervise and monitor offender compliance with all aspects of the County's DWI Compliance Monitoring/Tracking Program.
- (5) Intervene and take appropriate action if the offender does not comply.
- (6) Meet quarterly with the Department to discuss relative issues and maintain lines of communication.
- (7) Meet annually with the ignition interlock providers in the Santa Fe area to discuss relevant issues and maintain lines of communication.
- (6) Assess, refer and monitor appropriate treatment services for offenders.

2. Training and qualifications. Personnel funded under this agreement shall receive training that is appropriate, relevant and necessary to their duties to include but not limited to DFA Compliance Officer Basic Training and the annual trainings and refresher courses provided by the County.

3. Reimbursement. The Department shall reimburse the Grantee upon receipt of invoices, with supporting documentation, showing that expenses have been paid.

4. Reporting. A report shall be submitted on or before the 15th day of each month. The Department will work with the Grantee to develop a monthly report format. The report shall include but is not limited to:

- ☐ The number of persons enrolled per month, including the cumulative number of enrollees.
- ☐ any staffing issues, including vacancies; and
- ☐ any problems, successes, or other issues relevant to the project.

5. Funding. This agreement is funded pursuant to 23 U.S.C. Section 164. Such Alcohol Sanction funds must be used for alcohol-impaired driving countermeasures or enforcement of DWI, DUI related laws. The CFDA number is #20.608.

6. Goals. The Department's performance goals for the project is to effectively meet all the requirements stated in the scope of work. The partnership is vital to our success in reducing DUI's, crashes, fatalities and injuries on New Mexico's roads, streets and highways

7. Equipment. The Grantee may only purchase equipment under this agreement with prior approval of the Department.

Exhibit B—CERTIFICATIONS AND ASSURANCES

APPENDIX A TO PART 1300— CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS (23 U.S.C. CHAPTER 4; SEC. 1906, PUB. L. 109-59, AS AMENDED BY SEC. 4011, PUB. L. 114-94)

[Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.]

State: New Mexico

Fiscal Year: 2018

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- Sec. 1906, Public Law 109-59, as amended by Sec. 4011, Public Law 114-94
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, OMB Guidance on FFATA Subaward and Executive Compensation Reporting, August 27, 2010, (https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;

- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A unique identifier (DUNS);
- The names and total compensation of the five most highly compensated officers of the entity if:
 - (i) the entity in the preceding fiscal year received—
 - (I) 80 percent or more of its annual gross revenues in Federal awards;
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid recipients, sub-recipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189)

- (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require any of its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Insert in all contracts and funding agreements with other State or private entities the following clause:

“During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;

- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs a through e, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 - o The dangers of drug abuse in the workplace.
 - o The grantee's policy of maintaining a drug-free workplace.
 - o Any available drug counseling, rehabilitation, and employee assistance programs.
 - o The penalties that may be imposed upon employees for drug violations occurring in the workplace.
 - o Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - o Abide by the terms of the statement.
 - o Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction.
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—

- Taking appropriate personnel action against such an employee, up to and including termination.
 - Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid 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, an officer or employee of Congress, or an employee of 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 Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., “grassroots”) lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Certification (States)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1300.
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 or default or may pursue suspension or debarment.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *debarment*, *suspension*, *ineligible*, *lower tier*, *participant*, *person*, *primary tier*, *principal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and coverage sections of 2 CFR part 180. 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "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 and will require lower tier participants to comply with 2 CFR parts 180 and 1300.

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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 list of Parties Excluded from Federal Procurement and Non-procurement Programs.

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 proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

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 its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded 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 record, 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.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1300.

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*, *debarment*, *suspension*, *ineligible*, *lower tier*, *participant*, *person*, *primary tier*, *principal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 2 CFR part 180. You may contact the person to whom 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "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 and will require lower tier participants to comply with 2 CFR parts 180 and 1300.

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 proposed for debarment under 48 CFR part 9, subpart 9.4, 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 list of Parties Excluded from Federal Procurement and Non-procurement Programs.

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 proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

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.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase only steel, iron and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the

overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential benefits and cost-savings to your company or organization, please visit NHTSA's Web site at www.nhtsa.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, DC metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. Visit its Web site at www.trafficsafety.org.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or -rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete. The Governor is the responsible official for the administration of the State highway safety

program, by appointing a Governor's Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))

2. The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))
3. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)
4. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))
5. The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))
6. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:
 - Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to—
 - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
 - Increase use of seatbelts by occupants of motor vehicles;
 - Submission of information regarding mobilization participation into the HVE Database;
 - Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
 - An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on

behalf of Indian tribes;

- Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
- Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a).
- (23 U.S.C. 402(b)(1)(F))

7. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))
8. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))