Invitation for Bid

Jacobs Center Gateways and Shade Structures Project

Submission Deadline:
Friday, January 4, 2019
3:30pm PDT

This activity is funded in whole or in part with Community Development Block Grant Program funds provided by the United States Department of Housing and Urban Development to the City of San Diego.

This project is subject to both State of California and Federal prevailing wage laws and requirements.

Reginald Jones
President and CEO
The Jacobs Center for Neighborhood Innovation
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BID DOCUMENTS – must be submitted for a bid to be considered responsive

1. Bid Security Form for Bond
2. Non-Collusion Affidavit
3. Verification and Execution
4. Certificate Regarding Contractors License
5. Designation of Subcontractors
6. Public Works Contractor Registration Certification
7. Contractors Certificate of Workers Compensation Insurance
8. Information Required of Bidders
9. Experience and Technical Qualifications Questionnaire
10. Bidders Reference List of Completed Projects
11. Bidders Current Projects
12. Bid Sheet (prices)

Each Bid must also include the following: 1. A cover letter detailing that the Bid was prepared in compliance and conformance with the requirements of the Bid. More information can be found on pages 5 and 10 of the Notice Inviting Bids. 2. A construction schedule and work plan. More information can be
found on page 10 of the Notice Inviting Bids. 3. A complete Schedule of Values attached to the Bid Sheet. More information can be found on page 11 of the Notice Inviting Bids.
JACOBS CENTER FOR NEIGHBORHOOD INNOVATION
NOTICE INVITING BIDS

JACOBS CENTER GATEWAYS AND SHADE STRUCTURES PROJECT

Issue Date: December 3, 2018
Owner: Jacobs Center for Neighborhood Innovation
404 Euclid Avenue, San Diego, CA 92114
(619) 527-6161
Period of Contract: Anticipated completion is on or before April 30, 2019
Construction Cost Estimate: $264,600.00
License Requirement: Bidders must possess a valid State of California “A” Contractor’s License. Prior to contract award, Contractor and all subcontractors must provide proof of registration with the System for Award Management (SAM). Registration is available at https://www.sam.gov.

INVITATION FOR BID
The Jacobs Center for Neighborhood Innovation, hereinafter referred to as “Owner,” invites bids for all labor and materials required to construct the Jacobs Center Gateways and Shade Structures Project from qualified contractors.

Bid documents can be downloaded from Owner’s website at: http://www.jacobscenter.org/bid-opportunities/

Throughout this Invitation for Bid and related documents, the term "Owner" will be used herein as a reference to the title owner of the property at the location of the project and the term "Project Manager" will be used as a reference to the City of San Diego Community Development Block Grant Project Manager. The City of San Diego may at times be referred to as “Agency”.

The Owner encourages local, small, minority owned, women owned, disabled, veteran owned, and or Section 3 Businesses to submit Bids.

PURPOSE
The purpose of this Invitation for Bid is to solicit competitive bids for entering into a contract for the professional services of a contractor authorized to do business in the State of California, in good standing with the State, and who has experience in performing the type of project described within the body of this document. All work is to be coordinated and constructed by a Licensed Contractor who has experience with CDBG funded projects of similar scope and size. Experience with public works projects and construction projects of a similar nature is also required.
SCOPE OF WORK
The scope of work ("Work") is to fabricate and install two artist designed gateways and three shade structures in a linear park owned by Owner at 5021 1/3 Guymon Street, San Diego, CA 92102. ("Site").

MANDATORY PRE-BID MEETING
A mandatory pre-bid meeting will be held at 10:30am PDT on Monday, December 17, 2018, in Conference Room 304 on the 3rd Floor at the Joe and Vi Jacobs Center, 404 Euclid Avenue, San Diego, CA 92114. The pre-bid meeting is mandatory, and all prime bidders must attend and register at the mandatory pre-bid conference as a condition precedent to have their bids considered “responsive.” The purpose of the pre-bid meeting is to review construction administration procedures, existing site conditions, site access, staging areas, safety, and protection of areas and pedestrian paths adjacent to the construction site. Nothing said at the pre-bid meeting changes the bid documents, and if a bidder hears something at the pre-bid meeting that they believe conflicts with the bid documents they must submit any questions to clarify if the bid documents will be modified.

BID BOND
A bid must be submitted with a fully executed satisfactory bid bond by an acceptable surety in an amount equal to ten percent (10%) of the total aggregate bid amount.

BID SUBMISSION
All bid documents are due on or before Friday, January 4, 2019, at 3:30pm PDT. LATE BIDS WILL NOT BE ACCEPTED. To be considered, bids must be sealed, include hard (one original and two copies) and an electronic copy on a flash drive, and be labeled with “Jacobs Center Healthy Trail Improvements”, the name of the bidder, the time and date of submission on the exterior of the envelope, and the appropriate State contractor’s license designation that the contractor holds. Bids must be submitted in person by the Bidder or a courier service that tracks delivery time, at the ground floor reception desk of the Joe and Vi Jacobs Center, 404 Euclid Avenue, San Diego, CA 92114, Attn: Selena Ellis-Viccarra.

In accordance with the provisions of California Law, the Contractor shall possess a valid State of California Class “A” contractor’s license at the time that the Bid is submitted. Failure to possess the specified license will render the bid as non-responsive and ineligible for award.

Bidders must submit all bid documents that are a part of this Invitation for Bid for bids to be considered responsive. Please see page 2 for a list of the bid documents included as part of this Invitation for Bid.

BID OPENING
Bids are protected from viewing by anyone prior to the bid submission deadline. Bids shall be opened and viewed by Owner after the submission deadline and made available for public viewing on request at the Jacobs Center for Neighborhood Innovation, 404 Euclid Avenue, San Diego, CA 92114. Owner will open, review, and publicly read bids aloud immediately following
the bid submission deadline in the ground floor lobby of the Joe and Vi Jacobs Center, 404 Euclid Avenue, San Diego, CA 92114.

ADDITIONAL INFORMATION
This project utilizes Community Development Block Grant (CDBG) funds and is subject to all applicable Federal, State and City rules, and the project must be carried out in accordance with Owner's signed agreement with the City of San Diego. The Contractor will be responsible for providing goods and services ancillary to the operation of a federally funded CDBG Program, administered by the auspices of the City of San Diego.

Each Bid submitted must explicitly state that this Bid has been prepared to include compliance with the following:
- Agrees to comply with the Owner's signed agreement with the City of San Diego (a copy is attached and made a part of this Invitation for Bid)
- Davis-Bacon Act Federal Prevailing Wages (SB975, Labor Code Section 1720)
- Section 3 of the Housing and Urban Development (HUD) Act (12 U.S.C. 1701u and 24 FR Part 135
- Federal Labor Standards Provisions HUD 4010 Form
- Department of Industrial Relations (DIR) registration requirements in accordance with Labor Code Section 1770-1781
- Davis Bacon Act General Wage Decision Number: CA180001 11/02/18

Please note, any changes to this Invitation for Bid will be issued to contractors in attendance at the Mandatory Prebid Meeting an official addendum.

FEDERAL DAVIS-BACON ACT COMPLIANCE
Contractor must comply with Davis-Bacon determinations. Owner shall comply, and require its contractor to comply, with the Davis-Bacon Act (40 USC §§ 3141-3144 and §§ 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5), for construction contracts in excess of $2,000, including the most current Davis Bacon Wage decisions/determinations CA180001 11/02/18. In accordance with the Federal law, Owner shall ensure, and require its contractor to ensure, that all laborers and mechanics performing work relating to the Project are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Federal law are imposed by State, City or other local law, nothing in this Section is intended to relieve Owner or its contractor of the obligation, if any, to pay the higher wage rate. Owner shall submit certified payroll records to City on a weekly basis, including the original statements of compliance.

Contractor and all subcontractors must provide proof of being registered with the (DIR) Department of Industrial Relations pursuant to 1770-1781 and also provide proof of Good Standing with the State of California and shall maintain basic records during the course of work
and shall preserve all records for a period of five years thereafter for all laborers and mechanics working at the Site.

The contractor selected shall register this project with the DIR for an assigned project number and provide the number to the Owner and subcontractors. Contractor must provide to the Owner proof that the project has been registered as a requirement of this Bid. Contractor and Subcontractors shall maintain and furnish to the Owner and the Project Manager a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury. The statement of compliance is signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the U.S. Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. The contractor shall be responsible for compliance of these provisions by their Subcontractors. Contractor and Subcontractors must comply all the provisions stated in the agreement between the Owner and the City of San Diego. Contract payments may be withheld when payroll records are delinquent, inadequate, or that underpayment has occurred.

The work to be performed under this Bid/contract is subject to the requirements of Section 3 of the Housing and Urban Development (HUD) Act [12 U.S.C. 1701u and 24 CFR Part 135], attached in Appendix 6. Section 3 is HUD's legislative directive for providing preference to low-and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

PREVAILING WAGE REQUIREMENTS
Contractor must comply with State and Federal prevailing wage determinations. The entire project is subject to State prevailing wage laws, pursuant to San Diego Municipal Code section 22.3019 and sections 1720 through 1861 and 3070-3098 of the California Labor Code, and all other City and State requirements that apply. In addition, since Project funding is being provided in whole or in part with Federal Community Development Block Grant (CDBG) Program funds provided by the United States Department of Housing and Urban Development, this project is also subject to Davis-Bacon Federal prevailing wages, and all other Federal requirements that apply. Wage Determinations are referenced in this Invitation for Bid. If wage rates imposed by State law are higher than those required under the Federal law, City or other local law, nothing in this section is intended to relieve Owner or its contractors of the obligation, if any, to pay the higher wage rate. Owner shall submit certified payroll records to City on a weekly basis, including the original statements of compliance.

The Bid opening date will be the “Bid Lock-In Date” for State and Federal Prevailing Wage Determination.

APPLICABLE LAWS
Contractor will abide by all applicable Federal, State, County, and City laws and regulations and obtain (or demonstrate current possession of) any and all permits and licenses that may be required. Failure to meet (or keep current) these requirements may result in termination of any agreement entered into. Any agreement resulting from this Invitation for Bid will be governed by the laws of the State of California. Venue for any legal proceedings, mediation, or arbitration which may arise out of this contract will be in the County of San Diego.

EQUAL EMPLOYMENT OPPORTUNITY
The Owner is an Equal Opportunity Employer and, as such, expects the selected Contractor and its Subcontractors to agree not to discriminate against any Women's and Minority Enterprises and employee or applicant for employment with respect to hiring and tenure, terms, conditions, or privileges of employment, or any matter related to employment because of race, religion, color, sex age, handicap, veteran status or national origin per Title VII of the Civil Rights Act of 1964 (as amended by Executive Orders 11246, 11375, and 12086; as supplemented by 41 C.F.R. chapter 60)

CONDITIONS OF THE CONSTRUCTION CONTRACT
No Project Scope of Work ("Work") activities shall be conducted at the Site prior to the preconstruction conference with the Contractor or without the Owner and Project Manager’s approval. No Work is to be performed prior to the issuance of the Notice to Proceed. No later than the date of the preconstruction meeting, Contractor shall submit to Owner for review and approval a preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any milestones specified in the Construction Contract ("Contract"), and identifying when all Subcontractors will be utilized. The schedule will include Contractor deliverables for shop drawings and other submittals.

A list of all Subcontractors, field superintendents, project managers, and contact information is required. Contractor shall verify all Subcontractors debarment and suspension status in the following databases:

- [Sam.gov](https://www2.cslb.ca.gov/OnlineServices/CheckLicenseII/CheckLicense.aspx) and
- https://www2.cslb.ca.gov/OnlineServices/CheckLicenseII/CheckLicense.aspx

Provide copies of print-outs to the Owner and the City of San Diego. Contractor shall provide copies of all subcontracts to the Owner and City of San Diego CDBG Project Manager.

BID REVIEW
Owner and the City of San Diego CDBG Project Manager reserves the right to reject any or all Bids and to waive any informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the bidders). Bid items deemed necessary by the Owner are listed on the Bid Sheet and should not exceed the construction contract budget. Contractors must respond using the form provided for all Bid items listed on the Bid Sheet.
The selection will consider each bidder's overall suitability to provide the required services within the project's time, budget and operational constraints, and it will consider the comments and/or recommendations of the contractor's previous clients, as well as other references. Award of the contract will be to the lowest and most qualified responsible bidder.

A ten (10) calendar day waiting period will be given before selecting the intended contractor to allow for possible protests of the bid process. Any protests that arise will be given a 10-day resolution time and the process will continue as stated in the Invitation for Bid.

Submitted Bids will be reviewed based on the following criteria in addition to all other requirements as stated in this full Invitation for Bid. Failure of Bidder to sufficiently provide proof of and meeting any or all of the qualifications listed below and throughout this Invitation for Bid, in the opinion of the Owner, will result in the Bidder's Bid being deemed non-responsive.

- Qualification of the company and experience of the team in similar projects.
- Contractor must demonstrate at least five years of experience in similar projects.
- Evidence that the proposer has financial stability and other resources to complete the Work.
- Quality and detail of schedule. Contractor construction schedule must meet anticipated completion date of April 30, 2019.
- Contractor and Sub List Demonstrates Certifications of: SBE/SLBE/MBE/WBE/DBE and or Section 3 Business
- Quality and detail of the work plan. Contractor must submit construction work plan. Plan must be clear and concise.
- Currently and projected work load, and plan to complete the Work within the time constraints described in the Schedule section of this Invitation for Bid.
- Final proposed cost. (Costs must be detailed as shown in the Cost Bid Form)
- Ability to satisfy the "signed contract & project initiation" requirements described in the Schedule section of this document.
- Complete, thorough and comprehensive Bid Package/with all required documents and information submitted.
- Meet Bid guarantee requirements.

**SCHEDULE**
Due to the sensitivity of meeting guidelines related to the funding of this project, Contractor's bidding on this project must agree that all work shall be completed on or before April 30, 2019. Any delays must be reported in writing to Selena Ellis-Vizcarra at bids@jacobscenter.org. Schedule must be updated on a weekly basis and provided to the project team.

Within ten calendar days after written notification of award of Contract, Contractor shall deliver to Owner the signed Contract, insurance certificate(s) and other documentation required for execution of Contract. Contract will not be binding upon until it has been executed by both parties. Owner will not be liable for any delays prior to the award or execution of Contract.
NONDISCRIMINATION

- Owner encourages the submission of Bids from Women's and Minority, Disabled Veteran, Disabled, Small Business Enterprise, Women Owned Businesses and SLBE, ELBE.
- Owner is an Equal Opportunity Employer. Recipients of contracts with Owner must be aware that the Owner is a pass thru agency for federal, state, county and local dollars and that Owner does not discriminate. Recipients of contracts are subject to prohibitions against discrimination. Recipients of awards agree that they will not discriminate against men or women regardless of race, creed, ancestry physical ability, medical condition, pregnancy, age political affiliation, marital status or sexual orientation. Recipients must comply with Owner’s drug free workplace policy.
- Recipients are subject to and must comply with all federal, state, county and local laws, including but not limited to nondiscrimination laws, Immigration and Naturalization law, Gender Harassment Warranty and Liability, Americans with Disabilities Act, Social Security Act, and Drug Free Workplace.
- Owner reserves the right to reject any and all Bids or waive any irregularities in a Bid or in the Bid process.
- The Contractor agrees that in addition to the organization, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- Equal Employment Opportunity-The Contractor will comply with E.O. 11246, "Equal Employment Opportunity", as amended. Contractor is subject to and must comply with all federal, state, county and local laws, including but not limited to nondiscrimination laws, Immigration and Naturalization law, Gender Harassment Warranty and Liability, Americans with Disabilities Act, Social Security Act and Drug Free Workplace.
- Copeland "Anti-Kickback" Act-The Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair to give up any part of the compensation to which he is otherwise entitled.
- Contract Work Hours and Safety Standards Act-The Contractor will comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor Regulations. This provision requires wage computations on a 40-hour workweek with all hours in excess of 40 paid at 1 1/2 times the basic rate of pay.
- Clean Air Act and the Federal Water Pollution Control Act, as amended. Contractor agrees to comply with all applicable standards, orders or regulations issued.
- Contractor is subject to and must comply with all federal, state, county and local laws, including but not limited to nondiscrimination laws, Immigration and Naturalization law, Gender Harassment Warranty and Liability, Americans with Disabilities Act, Social Security Act and Drug Free Workplace.
- Byrd Anti-Lobbying Amendment- contractors must file required certification. Debarment and Suspension (E.O.s 12549 and 12689) No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement
or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, Debarment and Suspension and 49 CFR part 29.

ADDITIONAL RULES/STIPULATION OF TERMS
Expenses for developing the Bids and answering Owner questions are entirely the responsibility of the Contractor and shall not be chargeable in any manner to Owner or the City of San Diego.
- This document is provided as a courtesy. Owner assumes no responsibility for failure to send it to all interested entities or companies. Owner will not be responsible for any oral instructions, nor should a Bid be based upon verbal information from any employee of Owner.
- Addenda issued during the time of the bidding process shall be included in the Bid and shall be made a part of the Contract. Contractor shall list each addendum received.

ADDITIONAL BID SUBMITTAL REQUIREMENTS
Contractors must complete the Bid Sheet with an attached itemized construction costs and submit a proposed construction schedule and work plan. Bid is to include a cover letter detailing all compliance, conformance and inclusion of information and requirements listed in this full Invitation for Bid. Additionally, all attached and referenced forms and documents must be included in Invitation for Bid response. Failure of Bidder to sufficiently provide proof of and meeting any or all of the qualifications listed throughout this Invitation for Bid, in the opinion of the Owner, will result in the Bidder's bid being deemed non-responsive.

REPORTING AND RESOLVING DISCREPANCIES
It is the responsibility of the Proposer to include costs for any unforeseen elements and to provide for all contingencies within their proposed cost. If during performance of the Work, Contractor discovers any conflict, error, ambiguity or discrepancy within the Contract documents or between the Contract documents and any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, Contractor shall report it to the Owner in writing at once, and Contractor shall not proceed with the Work affected thereby until an amendment or supplement to the Contract documents has been issued by one of the following methods indicated as follows:

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- Construction Change Directive
- Change Order
- Time Extension Request

In addition, the requirements of the Contract documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
- Review of a Shop Drawing or sample
• Written interpretation or clarification

A written Change Order executed by Owner and Contractor and approved by the City of San Diego is required before Contractor commences any activities associated with a change in the Work which, in Contractor's opinion, will result in a change in Contract Amount and/or Contract Times.

PROPOSED PROJECT COST BREAKDOWN
Please provide a detailed cost for all self-performed and subcontracted work in a line item schedule of values attached to the Bid Sheet.

QUESTIONS AND INQUIRIES
All questions and inquiries for information must be emailed to Selena Ellis-Vizcarra, Compliance and Project Manager at bids@jacobscenter.org no later than 5:00pm PDT on Wednesday, December 19, 2018, An addendum will be generated to respond to all questions that are material in nature and posted at http://www.jacobscenter.org/bid-opportunities/ by Friday December 21, 2018. When this addendum is posted, Owner will email all potential bidders who attended and registered at the pre-bid meeting. Answering questions that are not material in nature will be at the sole discretion of the Owner.

ADDITIONAL BID AND CONTRACT DOCUMENTS INCORPORATED BY REFERENCE
The following documents are incorporated by reference as a part of this Invitation for Bid:
• Davis Bacon Act General Wage Determination Decision Number: CA180001 11/02/18
• State Prevailing Wage Determination Decision Number: SD-2018-2
• Supplementary Conditions — Construction Contract HUD form 92554
• Davis-Bacon Act Federal Prevailing Wages (SB975, Labor Code Section 1720)
• Section 3 of the Housing and Urban Development (HUD) Act (12 U.S.C, 1701u and 24 FR Part 135
• Federal Labor Standards Provisions HUD 4010 Form
• Labor Code Section 1770-1784
• FY 2018 Operating Manual — Bonding Information and Procurement Process
1. **AVAILABILITY OF CONTRACT DOCUMENTS**

Bid forms, contract documents and plan sets will be available electronically, at no cost, on Owner website: [http://www.jacobscenter.org/bid-opportunities/](http://www.jacobscenter.org/bid-opportunities/). No paper bid sets will be available for purchase. The official version of all Contract Documents, which include the Notice Inviting Bids, Instruction to Bidders, Special Provisions, Appendices, and Bid Documents, any other appendices, attachments or exhibits (if any), and addendum (if any) shall be on Owner website. Referenced standards, codes, regulations and other materials may not be available on the website. It shall be the Bidder’s responsibility to find sources for all such references.

Owner does not warrant, represent, or guarantee the accuracy, completeness, or adequacy of information provided from any third-party source. Owner shall not be responsible or liable in any way whatsoever for any loss or damages of whatever kind, nature, or scope, including, but not limited to, time, money or goodwill arising from errors, inaccuracies, or omissions in any documents and/or information retrieved from any third-party source.

Owner does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Bid Documents.

2. **EXAMINATION OF CONTRACT DOCUMENTS AND WORK SITE**

Bidders shall be solely responsible for examining the Site and the Contract Documents, including any addenda issued during the bidding period, and for informing themselves with respect to local labor availability, means of transportation, necessity for security, laws and codes, local permit requirements, wage scales, local tax structure, contractors’ licensing requirements, availability of required insurance, and other factors that could affect the Work. Bidders are responsible for consulting the standards referenced in the Contract Documents. Bidders shall be solely responsible for their failure to examine the documents and inform themselves, shall proceed at their sole risk, and no relief for error or omission will be given except as required under State law.

Each prospective Bidder is responsible for fully acquainting itself with conditions of the Site (which may include more than one location) and those relating to construction of the Work, fully understanding the facilities, difficulties and restrictions which may affect the cost or effort required to complete the Work. To this end, a pre-bid meeting will be held on the date(s) and time(s) indicated in the Notice Inviting Bids. Absence of a pre-bid conference or Owner led site walk does not relieve the Bidder from their obligation of examining all sites in such a manner that will provide the Bidder with all the site information necessary to complete a competitive and all-inclusive bid.

By submitting a bid, the Bidder certifies that:
a) The Bidder has carefully examined the Site, has taken steps to obtain all information concerning site conditions and is familiar with all conditions (including information that Owner made available to all Bidders during the bid process, and costs and physical conditions) affecting the performance of the Work, and

b) The Bidder has carefully examined the Bid and Contract Documents and the Bid and Contract Documents contain no significant error, inconsistency or omission and the Bidder has requested additional information and clarification from Owner in writing with respect to any such error, inconsistency or omission and has received such information and clarification from Owner, and

c) The Bid and Contract Documents are sufficient to have enabled the Bidder to determine the cost and duration of the Work and to enter into the Contract and the Bid and Contract Documents are sufficient to construct the Work in accordance with all applicable laws, statutes, buildings codes and regulations and otherwise to fulfill the Bidder’s obligations under the Contract, and

d) The Bidder has requested each Subcontractor to carefully examine the Site, information concerning Site conditions, and Bid and Contract Documents with respect to the portion of the Work to be performed by such Subcontractor and that each Subcontractor has certified to the Bidder that such Subcontractor requires no additional information or clarification to perform the portion of the Work to be performed by such Subcontractor except as may have been requested in writing by the Bidder and to which Owner has responded.

e) That any deficiencies, omissions or errors remaining in the Contract Documents at bid time have been considered in Bidder’s costs and that Bidder will build and deliver the project as defined in the Contract Documents as whole and complete project.

3. ESTIMATED QUANTITIES OF WORK OR MATERIAL
The quantities of work or material stated in the unit price items of the Bidding Sheet(s), if any, are supplied only to give an indication of the general scope of work. Owner does not expressly or by implication agree that the actual amount of work or material will correspond therewith. Owner reserves the right to increase or decrease the quantity amount of any unit price item of the Work by an amount up to and including 25 percent of any bid item(s), or to omit portions of such work as may be deemed necessary or expedient by Owner without a change in the unit price. See Special Provisions and Specifications for exceptions to the 25% limit, if applicable.

Owner reserves the right to eliminate any item of work in its entirety.

4. INTERPRETATION OF CONTRACT DOCUMENTS & REQUESTS FOR CLARIFICATION
The Bidder shall interpret all the Contract Documents as whole and inseparable. The Contract Documents are complementary and cooperative. Anything specified in the written documents and not shown on the plans or shown on the plans and not specified in the documents shall be as though show on or specified in both.

Discrepancies, omissions and errors in any part of the Bid and Contract Documents shall immediately be brought to the attention of Owner by submission of a written Request for Clarification. Any Request for Clarification must be sent via e-mail to the Project Manager, Selena Ellis-Vizcarra, bids@jacobscenter.org, no later than five (5) working days prior to the time of the bid submission. The Bidder shall be responsible for the prompt delivery of the request. Owner may or may not respond to Bidder’s requests for clarifications.

When bidding the project, the Bidder shall include all costs for a complete and turn-key project. If there is no line item for an item shown on the plans or details, described in the specifications or required for a complete turn-key project the Bidder shall include all such costs in the most appropriate line item. The winning Bidder shall provide a schedule of values after contract award that indicates where items for which there is no line item have been included into designated line items for processing progress payments. If no schedule of values is provided, or if the schedule of values is incomplete, the payments will be made in accordance with Owner’s determination as to percent or quantity of work complete.

5. ADDENDA
Owner reserves the right to revise the Contract Documents prior to the bid submission date. Revisions, if any, shall be made by written addenda. Any addenda item that is considered a material change shall be issued on the Owner’s website the no later than 72 hours prior to the date and time fixed for the submission of bids. It is the Bidder’s responsibility to periodically check the website for updates to the bid documents, which will include general notifications, addenda, and answers to Bidder submitted questions. Pursuant to Public Contract Code section 4104.5, Owner will extend the deadline for submission of bids if Owner issues an Addendum that includes material changes to the Work less than 72 hours prior to the deadline for submission of bids. Owner will determine, at its sole discretion, whether an Addendum warrants postponement of the bid submission date.

Failure of any Bidder to receive any addenda shall not relieve such Bidder from any obligations imposed by such addenda. All addenda so issued shall become part of the Contract Documents. Failure by the Bidder to include any addenda in its bid prices may not be a valid reason for the Bidder to withdraw its bid.

6. DEDUCTIVE AND ADDITIVE ALTERNATE BIDS; BASIS OF BID AWARD
If deductive and/or additive alternate bids items are called for in the Contract Documents, the base bid and without any alternate bids shall be used to compare all bids to determine the
lowest responsive bid. The time required for completion of the additive or deductive alternate bid items has been factored into the Contract Time and no additional time will be allowed for performing any of the alternate bid items unless the Contract Documents address this issue specifically and allow for an adjustment in time based on the alternate bids. Regardless of whether the alternate bid items will be considered in determining the low bid, Owner may elect to include any, all, or none of the alternate bid items, or to otherwise remove certain work from the scope of work. Accordingly, each Bidder must ensure that each alternate bid item contains a proportionate share of profit, overhead and other costs and expenses, which will be incurred by the Bidder for the project.

7. WORK BY BIDDER’S OWN FORCES
There is no limit on the amount of work that can or cannot be performed by the contractor’s own forces.

8. LISTING OF SUBCONTRACTORS
The Bidder shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100 et seq. ("Subcontracting Act"). Any references in these Bid and Contract Documents to the requirements of the Subcontracting Act are for the Bidder’s reference and shall not limit the Contractor’s obligations under law.

The Bidder shall set forth in the List of Subcontractors, of the Bid Forms:

a) The name, address, and phone number of the place of business of each subcontractor who will perform work, provide labor, or render service to the Bidder on or about the construction of the Work for this Project, or a subcontractor licensed by the State of California who, under subcontract to the Bidder, specially fabricates and installs a portion of the Work or improvement according to these Bid and Contract Documents, in an amount in excess of one-half (½) of one percent (1%) of the Bidder's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half (½) of one percent (1%) of the Bidder's total bid or ten thousand dollars ($10,000), whichever is greater.

b) The portion of the work that each listed subcontractor described in item (a) above shall perform.

The Bidder shall list only one subcontractor for each portion of the Work as is defined by the Bidder in the List of Subcontractors section of the Bid Schedule. Partial submittal or failure to include all required information regarding subcontractors may preclude the full analysis and review of the Bid and may be cause to disqualify the Bid as non-responsive.
Contractor shall submit a copy of all listed subcontractor(s)’ bids when requested by Owner as a condition precedent to an award or payment.

9. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS
In accordance with the provisions of the California Labor Code, contractors and subcontractors may not perform work on this project with a subcontractor who is ineligible to perform to work on a public pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on this project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on this contract. Any public money that is paid to a debarred subcontractor by the Contractor shall be returned to Owner. The successful Bidder, as Contractor, shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

10. BID GUARANTEE
Bids shall be submitted with a bid bond, payable to Owner and executed by the Bidder as Principal and surety as Obligor, in an amount equal to at least ten percent (10%) of the total bid price. A bid bond must be on the form provided and the surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120; personal sureties and unregistered surety companies are unacceptable. Said bond shall be given as a guarantee that the Bidder will enter a contract if awarded the work and shall provide the required payment and performance bonds and insurance certificates and in case of within ten (10) working days after being requested to do so by Owner. Refusal or failure to enter into said contract and provide the required documents may be result in forfeiture of the Bidder’s bid guarantee (bond) to Owner and Owner may award the contract to another Bidder or may call for new bids. A bid received and not accompanied by such a bond will be rejected as non-responsive. The Principal and Obligor agree and certify by submitting a bid and bid bond that any copy of the bid bond shall have the full force and effect as the original.

11. PREVAILING WAGES
For all prevailing wage requirements, the Bidder shall refer to Section 7-2 LABOR of the Special Provisions, and Appendix 2, the State of California, Department of Industrial Relations and the Federal-Bacon Act if federally funded.

The general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract may be obtained online at http://www.dir.ca.gov/dsl. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the Site.
If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall pay the higher of the state or federal prevailing wage rates and comply with all Davis-Bacon Act requirements.

No contractor or subcontractor may be listed on a bid proposal this project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for this project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Bid opening date will be the “Bid Lock-In Date” for State and Federal Prevailing Wage Determination.

12. COMPLETION OF BID FORMS
Bidders must submit all Bid Documents attached to this Invitation for Bid for bids to be considered responsive. Bidders must submit all bid documents that are a part of this Invitation for Bid for bids to be considered responsive. Please see page 2 for a list of the bid documents included as part of this Invitation for Bid.

Bidders shall only use the electronic bid schedule and complete on-line provided forms, printing, completing, scanning them in a clear and legible .pdf format for the hard copy and electronic submissions.

Bidders shall only use the electronically provided bid schedule and complete forms provided on-line; print, complete, sign and submit to Owner all Bid Documents in clear and legible format for the hard copy and electronic submissions.

Bidders shall fill in all blank spaces (including inserting “N/A” [not applicable] where appropriate) and initial all interlineations, alterations, and/or erasures to the Bid Forms. Bidders shall not delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. USE OF A CLEARLY LEGIBLE AND SCANABLE COLOR IS REQUIRED (black or deep blue). Deviations in any of the Bid Forms may be cause for rejecting a bid by Owner as non-responsive.

The signature of all persons signing the bid proposal shall be in longhand by an individual clearly authorized to bind the Bidder’s company. The Bidder shall provide evidence that the individual(s) signing the Bid Forms are authorized to bind the legal entity of the Bidder. The notarization does not constitute such proof unless the legal entity of the Bidder is an individual.
13. NOTARY PUBLIC
All signatures on the bid bond and other forms as indicated shall be notarized.

14. PENALTY FOR COLLUSION
If at any time it is found that the person, firm, or corporation to whom the Contract has been awarded, has, in presenting any bid or bids, colluded with any other party or parties, then the Contract so awarded shall be null and void, and Owner may accept another bid or advertise for new bids and contract for such work. The Contractor and the Contractor’s sureties shall be liable to Owner for all loss or damages suffered by Owner.

15. DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION CERTIFICATION FOR PUBLIC WORKS CONTRACTOR
The Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the Bid non-responsive.

16. SUBCONTRACTOR BIDS
Bidders shall provide a copy of all bids by subcontractors listed in the bid documents when requested by Owner. Failure to provide the subcontractor’s bids within 5 working days of Owner request may be grounds for finding a bid non-responsive or withholding of payment.

17. PERFORMANCE BOND AND PAYMENT (LABOR AND MATERIALS) BOND REQUIREMENTS
The successful bidder shall deliver to Owner two fully executed, identical counterparts of the Performance Bond and Payment (Labor and Materials) Bond in accordance with the Contract Documents. Each bond shall be for one hundred percent (100%) of the Contract Price. Personal sureties and unregistered surety companies are unacceptable. Failure to furnish a bond within the time requirements may result in the forfeiture of the Bid Guarantee at the sole discretion of Owner.

18. INSURANCE REQUIREMENTS
The successful bidder shall procure and maintain insurance in the form and in the amount specified in the Invitation for Bid and provide Owner with the required documentation and certificates of insurance.

19. WORKERS COMPENSATION
Each bidder shall submit the Contractor’s Certificate Regarding Workers’ Compensation form and maintain the required Workers’ Compensation Insurance throughout the project.

20. REQUEST FOR SUBSTITUTIONS
The successful bidder shall comply with the substitution request procedures set forth in the Contract Documents. No substitutions are allowed in Bids.

21. SUBMISSION OF BIDS
It is the sole responsibility of the Bidder to see that their bid is submitted prior to the stated deadline. Bidders will not be able to modify their bids after the stated deadline. No oral, written or telegraphic submissions or modifications will be considered. It is the sole responsibility of the bidder to see that their bid is received at the proper time. Any bids received after the scheduled closing time for receipt of bids will not be accepted and shall be returned unopened to the bidder. Bidders will not be able to submit or modify their bids after the stated deadline. The reception clock in the Joe and Vi Jacobs Center shall be the official clock for the submission deadline.

22. BID RESULTS
Bids shall be posted electronically on the Owner’s website after the lowest responsive and responsible bid has been determined http://www.jacobscenter.org/bid-opportunities/. Final determination of the lowest responsive and responsible bidder shall be posted at http://www.jacobscenter.org/bid-opportunities/ for public viewing.

23. QUALIFYING BIDS AND BIDDERS
Owner shall review all bids for responsiveness to these Notice inviting Bids, Instructions to Bidders, Bid Forms, Special Provisions, Contract Documents, and applicable law.

After the lowest monetary and responsive Bidder has been determined, Owner will review the Bidder to determine whether it is the lowest responsible Bidder. The term "responsible" is defined by California law, but generally means that the Bidder is able to demonstrate: (1) the capacity to perform the Work required by these Contract Documents with respect to financial strength, resources available, and experience; and (2) its integrity and trustworthiness to complete performance of the Work in accordance with the Contract Documents.

Owner will make its determination of responsibility based upon information submitted by the Bidder contained in the Bid Forms and, at Owner’s discretion, interviews with the Contractor previous agencies, clients, design professionals, or subcontractors with whom the Bidder has worked.
A bid shall not be binding upon Owner until after the Contract is signed by both the Contractor and Owner and delivered to the Bidder by Owner’s authorized representative.

24. DISQUALIFICATION OF BIDDERS
There are several reasons that Owner may disqualify a bidder. Some of the more common reasons Bidders are disqualified include, but are not limited to:

a) Bidder submits or has a financial interest in more than one bid. However, a person, firm, corporation or other entity that has submitted a proposal to a Bidder, or that has quoted materials to a Bidder, is not thereby disqualified from submitting a proposal or quoting prices to another Bidder, submitting a bid to Owner. No person, firm, corporation, or other entity may submit a proposal to a Bidder, or quote prices of materials to a Bidder, when also submitting a prime bid for the Work.

b) Submittal of unbalanced bids in which the prices for some items are out of proportion to the prices for other items of work.

c) Lack of responsibility as shown by past work judged from the standpoint of workmanship and progress.

d) Uncompleted projects of similar scope and size or poor safety record, which, in the judgment of Owner, might hinder or prevent the prompt completion of additional work if awarded.

e) For being in arrears on existing contracts, having a history of claims, being in litigation with Owner, or having defaulted on a previous contract.

f) Lack of competency as revealed by the financial statements or statements of experience, plant, and equipment.

g) Evidence of collusion among Bidders.

h) Modification of a Bid Form.

i) Submittal of an incomplete bid and/or failure to include all required information either on which precludes full analysis and review of said Bid and/or which precludes meaningful comparison of the Bid with other bids received by Owner.

25. WITHDRAWAL OF BID

Any proposal may be withdrawn prior to the date and hour set forth for bid submission in the Notice Inviting Bids. The Bidder must withdraw their bid in writing by a notice executed by the Bidder or its duly authorized representative and delivered to Owner at 404 Euclid Avenue, San Diego, CA 92114 before the stated bid deadline. Withdrawn bids must be picked up at the Joe Jacobs Center Gateways and Shade Structures Project (hereafter collectively referred to as the “project”) within three (3) days after the bid deadline or they will be destroyed by Owner. The withdrawal of a bid shall not prejudice the right of a Bidder to file a new bid. Any request to withdraw a bid after bid submission must be made in accordance with Public Contract Code section 5100 et seq. and must be submitted in writing within five (5) working days, excluding Saturdays, Sundays and State holidays, specifying in detail how the qualifying mistake was made. Whether a bid is allowed to be withdrawn under PCC section 5100 et seq. shall be at Owner’s sole discretion.
26. REJECTION OF BIDS
Owner, in its absolute discretion, reserves the right to reject any or all bids, and to waive any informalities or minor irregularities in the Bids. Bids may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures or irregularities of any kind or if the supplements set forth in the bid forms are not submitted with the bid.

Bidders whose bids are rejected will receive a written non-responsive letter.

27. BID PROTEST PROCEDURE
Any bid protest relating to the form or content of the Bid or Contract Documents must be submitted in writing to Owner at least ten (10) business days before the original date set for the bid submission. Any Bidder who submits a bid without making a protest shall be deemed to have waived any objection to the form or content of the Bid or Contract Documents not previously stated in writing.

Submitted bids will be timely made available for review upon written request of any Bidder after the submission deadline.

Bidders may file a “protest” of a Bid with Owner. The protest must:

A. Be filed in writing not later than 5:00 p.m. on the fifth business day after the bid submission date;
B. Clearly identify the specific alleged irregularity or other basis for the protest;
C. Specify, in detail, the factual and legal grounds for the protest; and
D. Include all relevant supporting documentation with the protest at time of filing.

If the protest does not meet all these requirements, Owner may reject it without further review.

If the protest is timely and complies with all the above requirements, Owner’s Architect, and/or a designated Owner staff member, shall review the protest, any response from the challenged Bidder, and all other relevant information. Owner will provide a written response to the protestor.

The procedure and time limits set forth in this section are mandatory and are the sole and exclusive remedy in the event of a bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.

28. RETENTION AND SUBSTITUTION OF SECURITY
Owner will make monthly progress payments based upon work performed in accordance with the Contract Documents. Owner will retain five percent (5%) of all amounts due at the end of the project as retention until 30 days after filing of the Notice of Completion or as required by
law. At the request and expense of the successful Bidder, the Contractor may substitute securities for the amount so retained in accordance with Public Contract Code section 22300.

29. **SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**
Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents. Bidders shall include all applicable taxes and fees that are in effect or reasonably anticipated on the bid date in their bid price.

30. **EXECUTION OF CONTRACT**
As required herein the successful bidder shall execute the Contract included with the bid documents in the amount determined in accordance with the Contract Documents. Owner may require appropriate evidence that the persons executing the Contract are duly authorized to do so on the Contractor’s behalf. Failure to execute the Contract in the time prescribed may result in the Bidder forfeiture of their bid bond.

The Contractor shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.

Affirmative steps shall include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

5. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.
The Contractor shall submit evidence of compliance with the foregoing affirmative steps when requested by Owner.
SPECIAL PROVISIONS

THESE SPECIAL PROVISIONS TAKE PRECEDENT OVER ANY CONFLICTING PROVISIONS OF THE CONSTRUCTION CONTRACT.

1. CONTRACT BONDS. Before execution of the Contract, the Bidder shall file two fully executed, identical counterparts of surety bonds with Owner in the amounts and for the purposes noted below. Bonds issued by a surety who is listed in the latest version of US. Department of Treasury Circular 570, who is authorized to issue bonds in California, and whose bonding limitation shown in said circular is sufficient to provide bonds in the amount required by the Contract shall be deemed to be approved unless specifically rejected by Owner. Bonds from all other sureties shall be accompanied by all the documents enumerated in the Code of Civil Procedure, Section 995.660 a). The Bidder shall pay all bond premiums, costs, and incidentals.

Each bond shall incorporate, by reference, the Contract and be signed by both the Bidder and the Surety. The signature of the authorized agent of the Surety shall be notarized.

The Bidder shall provide two (2) good and sufficient surety bonds. The "Payment Bond" (Material and Labor Bond) shall be for not less than 100 percent of the Contract Price, to satisfy claims of material suppliers and mechanics and laborers employed by it on the Work. The bond shall be maintained by the Contractor in full force and effect until the performance of the Contract is accepted by Owner and until all claims for materials and labor are paid and shall otherwise comply with the Civil Code.

The "Performance Bond" shall be for 100 percent of the Contract Price to guaranty faithful performance of all work, within the time prescribed, in a manner satisfactory to Owner, and that all materials and workmanship will be free from original or developed defects. The bond must remain in effect until the end of all warranty periods set forth in the Contract Documents.

Should any bond become insufficient, the Contractor shall renew the bond within 10 days after receiving notice from Owner.

Should any surety at any time be unsatisfactory to Owner, notice to that effect will be given to the Contractor. No further payments shall be deemed due or will be made under the Contract until a new surety qualifies and is accepted by Owner.
Changes in the Work or extensions of time, made pursuant to the Contract, shall in no way release the Contractor or the Surety from its obligations. As a condition of providing a bond for this project the Surety waives any notice requirements of such changes in work or extensions of time.

2. RECORD DRAWINGS (Red-line As-built drawings). Accurate and legible records shall be kept on a set of contract drawings of all changes of work, which occur during construction. The contractor shall record the exact location by dimension, and exact depth, by elevation, of all underground lines, valves, plugged tees, capped ends, and all other underground facilities. The Contractor shall record, by dimension and/or scale drawings, all wiring, conduits and pull boxes as actually installed. All information necessary to maintain and/or service any concealed work shall be noted on these record drawings. Such records shall be kept up to date with all entries checked by Owner before the work is buried or covered up. Upon completion of the Work (but prior to acceptance of the Work), Contractor shall deliver to Owner two sets of complete "As Built" record drawings.

Depending upon the length of the Contract and the complexity of the project, Owner reserves the right to request interim prints of the "As-Builts" record drawing when the Contractor submits periodic application for payment to verify the accuracy and timeliness of recording the actual construction conditions. If the Contractor's "As Built" documentation is not satisfactory to Owner, this deficiency may be cause to delay approval of the periodic or final payment applications until the deficiencies are satisfactorily resolved.

If the Contractor fails to keep adequate As-Built Drawings Owner may take any and all measures necessary to create proper and acceptable As-Built drawings through any means Owner deems appropriate including hiring a qualified third party. All costs incurred by Owner to develop and produce As-Built drawings shall be deducted from amounts due to the Contractor.

See additional requirements within the Contract Documents (if any).

2.1 PAYMENT. Payment for all costs associated with the keeping and processing of As-Builts shall be included in the line item for “As-Builts”. If there is no line item for “As-Builts” then all said costs shall be included in the various line items of work.

3. DISPUTE RESOLUTION PROCEDURES

3.1 Informal Dispute Resolution. Prior to proceeding with mediation, the Contractor shall attempt to resolve all disputes informally and complete the requirements of the Contract Documents.

The Contractor is required to submit all claims before submitting the final invoice. The Contractor's failure to follow any and all procedures stated herein in a timely manner shall
constitute a waiver of the claim and the Contractor shall have no standing to bring the claim against Owner in a court of law.

3.2 Mandatory Mediation. If a dispute arises out of, or relates to the Contract, or the breach thereof, and if said dispute cannot be settled through contract provisions provided for claim settlement or negotiations, the parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation subject to the following provisions:

(i) The party seeking mediation shall deliver a written notice of demand to resolve the dispute by mediation to the adverse party in accordance with these Contract Documents. The response shall include a short and plain statement of the party's defense to the claim and shall also state whether the party agrees to the mediator chosen by the demanding party. In the event the parties cannot agree upon a mediator, JAMS shall be used as the mediator and arbitrator.

(ii) The party seeking mediation shall deliver a written notice of demand to resolve the dispute by mediation to the adverse party and to the mediator before the final invoice is delivered to Owner.

(iii) Delivery of an invoice labeled in any way as “final invoice” to Owner shall constitute a waiver of all claims not already submitted by the Contractor and the Contractor shall have no standing to bring the claim against Owner in a court of law.

(iv) The locale of the mediation shall be in San Diego, California.

(v) In the event JAMS is no longer in business and there is no comparable successor, then the parties shall agree upon another mediator/arbitrator. If the parties cannot agree upon another mediator, then a single neutral mediator/arbitrator shall be appointed pursuant to Section 1281.6 of the Code of Civil Procedure.

(vi) The Contractor's failure to give timely notice of the request for mandatory mediation shall constitute a waiver of the claim and the Contractor shall have no standing to bring the claim against Owner in a court of law.

3.3 Conduct of Mediation Sessions

1. Mediation hearings will be conducted in an informal manner and discovery will not be allowed.

2. The discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party’s legal position. The parties may agree to exchange any information they deem necessary.
3. Both parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either party may have attorney(s), witnesses or expert(s) present. Either party may request a list of witnesses and notification whether attorney(s) will be present.

4. Any resultant agreements from mediation must be documented in writing. Mediation results and documentation, by themselves, must be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both parties. Mediators must not be subject to any subpoena or liability and their actions must not be subject to discovery.

3.4 Work Continuance. Unless otherwise agreed between Owner and the Contractor in writing, the Contractor shall carry on the Work and maintain its progress during any dispute and Owner shall continue to make payments to the Contractor for matters not in dispute in accordance with the Bid and Contract Documents.

3.5 Mandatory Assistance. If a third-party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this contract, upon Owner’s request, the Contractor agrees to assist in resolving the dispute or litigation. The Contractor assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution, litigation, or both.

3.6 Attorney Fees Related to Mandatory Assistance. In providing Owner with dispute or litigation assistance, the Contractor and or Subcontractors or their agents, officers, and employees may incur expenses and or costs. The Contractor agrees that any attorney fees and costs it may incur are not reimbursable.

3.7 Compensation for Mandatory Assistance. Owner may reimburse the Contractor for reasonable fees and expenses incurred by the Contractor for any required assistance rendered in accordance with “Mandatory Assistance” as Extra Work. Owner in its sole discretion shall determine whether these fees and expenses were necessary due to the conduct of or failure to act by the Contractor or Subcontractors or their respective agents, officers, and employees. If Owner determines that the basis of the dispute or litigation in which these fees and expenses were incurred were the result of the conduct of or failure to act by the Contractor or Subcontractors or their respective agents, officers, and employees, in part or in whole, Owner shall be entitled to be reimbursed for any payments made for these fees and expenses.

Reimbursement may be through any legal means necessary, including Owner’s withholding of payment.

3.8 Costs Relating to The Weather Damage. The Contractor shall have no claims against Owner for damages to any elements of the project resulting from the action of the elements, weather
or nature. If, however, in the opinion of the Architect, Contractor has made all reasonable efforts to protect the Work, Contractor may be granted a reasonable extension of Contract Time to make proper repairs, renewals, and replacements of Work.

4. CONSTRUCTION SCHEDULE AND COMMENCEMENT OF THE WORK

4.1 Construction Schedule. The Contractor shall provide the construction schedule in PDF on a memory stick and on 11” x 17” paper format to Owner at the Pre-construction meeting.

The contractor shall comply with the following construction schedule requirements.

4.2 Construction Schedule for Contracts Less Than $500,000 In Value

1. Provide a fully developed horizontal bar-chart type schedule.
2. Provide a separate time bar for each significant construction activity.
3. Provide a continuous vertical line to identify the first Working Day of each week.
4. Within each time bar, indicate estimated completion percentage in 10% increments. As Work progresses, place a contrasting mark in each bar to indicate actual completion.
5. Indicate graphically sequences necessary for completion of related portions of the Work.
6. Be of sufficient size to show data for the entire Contract Time.

4.3 Commencement of Work. Unless specified otherwise, the Contractor must start construction within 5 Working Days after the issuance of the Notice to Proceed (NTP) and diligently prosecute the Work to completion within the Contract Time. Do not start any construction activity at the Site until the Pre-construction meeting is held and the NTP has been issued by Owner. Contract time shall start on the date identified in the NTP.

4.4 Pre-Construction meeting. Owner will schedule a Pre-Construction meeting after the award and execution of the Contract and prior to construction. The Contractor (Principal and Project Superintendent) and any subcontractor for 5 percent or more of the Work shall attend and be prepared to provide and discuss the following information:

1. Contact names and numbers
2. Construction schedule, moratoriums and special events (if any)
3. Pre-NTP submittals as required
4. NTP issuance
5. Critical elements of the Work
6. Project safety and emergency procedures
7. Water quality control
8. Utility coordination
9. Required permits
10. Coordination with other agencies
11. Subcontractors
12. Submittals and potential substitutions
13. Schedule of values
14. Payment process
15. Survey requirements
16. Materials and delivery schedule
17. All other items identified in the Contract Documents

5. DEFAULT BY THE CONTRACTOR

5.1 General. The Contractor shall be in substantial default prior to the acceptance of the Work if the Contractor:

1. Becomes insolvent, assigns its assets for the benefit of its creditors, is unable to pay its debts as they become due, or is otherwise financially unable to complete the Work, or
2. Abandons the Work by failing to report to the Work site, or
3. Fails to diligently prosecute the Work to completion in accordance with the approved schedule, or
4. Disregards written instructions from the Owner or Architect or materially violates provisions of the Contract Documents, or
5. Fails to prosecute the Work according to the approved schedule, or
6. Disregards laws or regulations of any public body having jurisdiction, or
7. Commits continuous or repeated violations of regulatory or statutory safety requirements.

Notices, and other written communications regarding default between the Contractor, Owner, and the Surety shall be transmitted in accordance with the Contract Documents.

5.2 Notice to Cure. Owner will issue a written Notice to Cure the default to the Contractor and its Surety. The Contractor shall commence satisfactory corrective actions within 2 Working Days after receipt of the Notice to Cure.

5.3 Notice of Termination for Default. If the Contractor fails to commence satisfactory corrective action within the number of Working Days set in the Notice to Cure after receipt of the Notice to Cure, or to diligently continue satisfactory and timely correction of the default thereafter, then the Contractor be found in default of the Contract and Owner:

a) will terminate the Contractor’s right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety,
b) may use any materials, equipment, tools or other facilities furnished by the Contractor to secure and maintain the Work site, and
c) may furnish labor, equipment, and materials Owner deems necessary to secure and maintain the Work site.

The Contractor shall be entitled to no further payment until the remaining portion of the Work has been completed. The Contractor will be paid the actual amount due based on Contract Unit Prices or lump sum Bid and the quantity of the Work completed at the time of default, less damages caused to Owner by the default of the Contractor.

Costs incurred by Owner in performing the Contractor’s work, plus a markup of 15% on those costs for overhead, shall be deducted from monies due or to become due to the Contractor. The Contractor shall pay to Owner any amount by which those costs and markup exceed the unpaid balance of the Contract Price plus overhead costs incurred.

5.4 Responsibilities of the Surety. Upon receipt of the written notice of termination for default, the Surety shall immediately assume all rights, obligations and liabilities of the Contractor under the Contract. If the Surety fails to protect and maintain the Work site, Owner may do so, and may recover all costs incurred. The Surety shall notify Owner that it is assuming all rights, obligations and liabilities of the Contractor under the Contract and all money that is due, or would become due, to the Contractor shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

Within 15 Working Days of receipt of the written notice of termination for default, the Surety shall submit to Owner a written plan detailing the course of action it intends to take to remedy the default. Owner will review the plan and notify the Surety if the plan is satisfactory. If the Surety fails to submit a satisfactory plan, or if the Surety fails to maintain progress according to the plan accepted by Owner, Owner may, upon 48 hours written notice, exclude the Surety from the premises, take possession of all material and equipment, and complete the Work in any way Owner deems to be expedient. The cost of completing the Work by Owner shall be charged against the Surety and may be deducted from any monies due, or which would become due, the Surety. If the amounts due under the Contract are insufficient for completion, the Surety shall pay to Owner, within 30 days after Owner submits an invoice, all costs in excess of the remaining Contract Price.

The provisions of this subsection shall be in addition to all other rights and remedies available to Owner under the law.

5.5 Payment. The Surety will be paid for completion of the Work in accordance with Contract Documents less the value of damages caused to Owner by acts of the Contractor and Surety.

6.0 DELAYS AND EXTENSIONS OF TIME
6.1 General. If delays are caused by unforeseen events beyond the control of the Contractor, such delays will entitle the Contractor to an extension of the Contract time as provided herein, but the Contractor will not be entitled to damages or additional payment due to such delays. Such unforeseen events may include: war, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of work, inability to obtain materials, labor or equipment, required Extra Work, or other specific events as may be further described in the Special Provisions.

No extension of time will be granted for a delay caused by the Contractor's inability to obtain materials unless the Contractor furnishes to Owner documentary proof. The proof must be provided in a timely manner in accordance with the sequence of the Contractor's operations and the approved construction schedule. Failure to order materials in a timely manner will not afford the Contractor any extension of contract time.

If delays beyond the Contractor's control are caused by events other than those mentioned above, the Architect may deem an extension of time to be in the best interests of Owner. The Contractor will not be entitled to damages or additional payment due to such delays, except as otherwise specified in 6.4.

If delays beyond the Contractor's control are caused solely by action or inaction by Owner, such delays will entitle the Contractor to an extension of time per 6.4.

6.2 Extension of Time. Extensions of time, when granted, will be based upon the effect of delays to the Work. They will not be granted for non-controlling delays to minor portions of the Work unless it can be shown that such delays did or will delay the progress of the Work.

Owner will not grant a claim for extension in Contract Time unless the Contractor can demonstrate through a Critical Path Method (CPM) analysis of the Schedule's critical path(s) that:

a. The increases in the time to perform or complete the Work, or specified part of the Work, beyond the corresponding Contract Time arise from unforeseeable causes beyond the Contractor’s control and without the Contractor’s fault or negligence, and

b. Such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Time, despite the Contractor’s reasonable and diligent actions to guard against those effects.

The Schedule analysis must use delay sub networks i.e., fragnets to show the impact of the Work that is the basis of the Claim on specific impacted critical path Schedule activities. Fragnet is a group of schedule network activities representing a delay or change event.

Where the Contractor or subcontractors are prevented from completing any part of the Work within the Contract Time (or milestones) due to delay to a "critical path" activity beyond the
Contractor’s control or ours, an extension of the Contract Time (or Contract milestones) in an amount equal to the time lost on the critical path of the Project due to such delay will be the Contractor’s sole and exclusive remedy for such delay.

6.3 Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path, such will constitute an Excusable Delay, to the extent not set forth below, a delay will be considered an Inexcusable Delay:

a) Owner’s failure or inability to make available any portion or the entire Site in accordance with the requirements of the Schedule.
b) Owner’s failure or inability to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the Contractor’s fault or neglect as determined by the Architect.
c) Delays resulting from the acts or omissions of separate contractors, except to the extent Separate contractors perform their work properly and in accordance with the Schedule.
d) Delays resulting from Force Majeure.
e) Differing, unusual or concealed site conditions that could not reasonably have been anticipated by the Contractor in preparing the Schedule.
f) Delays resulting from the existence or discovery of hazardous materials or waste on the Site not brought to the Site by the Contractor.
g) Delays resulting from changes in Applicable Laws occurring after the date of execution of the Contract;
h) Delays occurring due to Owner’s acts or omissions and those within Owner’s control.
i) Delays resulting from Owner’s mandated suspensions of the Work.

6.4 Payment for Delays. The Contractor will be compensated for damages incurred due to Excusable Delays for which Owner is responsible. Such actual costs will be determined by the Architect. Owner will not be liable for damages which the Contractor could have avoided by any reasonable means, such as judicious handling of forces, equipment, or plant. The determination of what damages the Contractor could have avoided will be made by the Architect.

6.5 Written Notice and Report. If the Contractor desires payment for a delay or an extension of time, it shall file with Owner a written request and report of cause within one (1) day after the beginning of the delay. The request for payment or extension must be made within 20 days of the beginning of the delay and before the specified completion date. Failure by the Contractor to file these items within the times specified will be considered grounds for refusal by Owner to consider such request.

The Contractor shall provide written notice to Owner within ONE (1) hour of the beginning of any period that the Contractor has placed any workers or equipment on standby for any reason that the Contractor has determined to be caused by Owner or by any organization that Owner may otherwise be obligated by. The Contractor shall provide continuing daily written notice to Owner,
each working day, throughout the duration of such period of delay. The initial and continuing written notices shall include the classification of each workman and supervisor and the make and model of each piece of equipment placed on standby, the cumulative duration of the standby, the Contractor’s opinion of the cause of the delay and a cogent explanation of why the Contractor could not avoid the delay by reasonable means. Should the Contractor fail to provide the notice(s) required by this section the Contractor agrees that no delay has occurred and that it will not submit any claim(s) therefore.

6.6 Event of Force Majeure (Event). Any party to this contract may be excused for any delay or failure to perform its duties and obligations except for obligations to pay money, caused by and to the extent that such failure or delay is caused by an Event.

If an Event causes a delay or failure in performance of only a portion of the obligations of a Party, then only that portion of performance that was delayed or prevented by such cause shall be deemed excused. Performance of all other obligations of a Party shall not be excused by an Event. Any delay or failure to perform shall only excuse the Party for a period no longer than the delay or failure in performance caused by such Event. The Contractor shall not be entitled to damages or additional payment for any delay caused by an Event.

7. TIME OF COMPLETION.

7.1 General. All time limits stated in the Contract Documents are of the essence of the Contract. The Contractor shall diligently and continuously prosecute the work to completion within fifty (50) working days after the date of commencement of work as specified in the Notice to Proceed. Unless otherwise specified in the Contract Documents, the time of completion of the Contract shall be expressed in working days.

7.2 Contract Time Accounting. Owner will make a daily determination of each working day to be charged against the Contract time. These determinations will be discussed, and the Contractor will be furnished a periodic statement showing the allowable number of working days of Contract time, as adjusted, at the beginning of the reporting period. The statement will also indicate the number of working days charged during the reporting period and the number of working days of Contract time remaining. If the Contractor does not agree with the statement, it shall file a written protest within 5 days after receipt, setting forth the facts of the protest. Otherwise, the statement will be deemed to have been accepted and any right to dispute the statement will be waived.

8. LIQUIDATED DAMAGES. Failure of the Contractor to complete the Work within the time allowed will result in damages being sustained by Owner. Such damages are, and will continue to be, impracticable and extremely difficult to determine. The Contractor shall pay to Owner, or have withheld from monies due, the sum of $1,200 for each consecutive working day more than the time specified for completion of the Work plus additional days approved by Owner.
Execution of the Contract shall constitute agreement by Owner and Contractor that amount specified as liquidated damages per day is the minimum value of the costs and actual damage caused by the failure of the Contractor to complete the Work within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty and may be deducted from payments due the Contractor if such delay occurs.

9. USE OF IMPROVEMENT DURING CONSTRUCTION. Owner reserves the right to take over and utilize all or part of any completed facility or appurtenance. The Contractor will be notified in writing in advance of such action. Such action by Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic or from the action of the elements or from any other cause, except Contractor operations or negligence. The Contractor will not be required to re-clean such portions of the improvement before field acceptance, except for cleanup made necessary by its operations. Nothing in this subsection shall be construed as relieving the Contractor from full responsibility for correcting defective or non-compliant work or materials.

In the event Owner exercises its right to place into service and utilize all or part of any completed facility or appurtenance, Owner will assume the responsibility and liability for injury to persons or property resulting from the utilization of the facility or appurtenance so placed into service, except for any such injury to persons or property caused by any willful or negligent act or omission by the Contractor, Subcontractor, their officers, employees, or agents.

10. RIGHT TO AUDIT. Owner shall have the right to review and audit, and the reasonable right of access to the Contractor’s and all Subcontractor’s premises to review and audit the Contractor’s compliance with the provisions of the Contract. This right includes the right to inspect and photocopy same, and to retain copies, outside of the Contractor’s premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by Owner in its sole discretion. Owner will keep this information in strictest confidence. Owner will have the right to audit the project for 150 days after Final Payment.

The Contractor must include Owner’s Right to Audit in the Subcontracts and ensure that these specifications are binding upon all Subcontractors.

Owner’s Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that Owner determines is necessary to discover and verify that the Contractor is in compliance with all requirements under the Contract.

If there is a claim for additional compensation or for changes in Work, Owner’s Right to Audit includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that Owner determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred,
anticipated to be incurred, or for which a claim for additional compensation or for changes in the Work have been submitted.

The Contractor must maintain complete and accurate records in accordance with generally accepted accounting practices in the construction industry. Make available to Owner for review and audit all Project related accounting records and documents, and any other financial data.

11. CLAIMS FOR DAMAGES. Should the Contractor suffer injury or damage to person or property because of any act or omission of Owner or Owner's employees, agents or others for whose acts Owner is legally liable, such claim shall be made by the Contractor in writing to Owner within a reasonable time, not to exceed thirty (30) days, after the first observance of such injury or damage. Failure to submit the written claim within this time requirement shall constitute a waiver of any such claim.

12. LABOR NONDISCRIMINATION. Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

NOTICE OF NONDISCRIMINATION PROGRAM

The provisions of California Government Code Section 12990 are incorporated into the Contract Documents and the Contractor shall comply with all of its provisions.

The Contractor may obtain a copy of the Code at http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=12001-13000&file=12990

In accordance with CA Government Code 12990, Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. The Contractor will take affirmative action to ensure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

13. EMPLOYMENT ELIGIBILITY; CONTRACTOR. By executing this Contract, Contractor verifies that it fully complies with all Applicable Law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by
participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification and shall make them available to Owner or its representatives for inspection and copy at any time during normal business hours. Owner shall not be responsible for any costs or expenses related to Contractor’s compliance with the requirements provided for in this Section.

14. PREVAILING WAGES, RECORDS AND REPORTING. The provisions of the California Labor Code and the Federal Davis-Bacon Act is incorporated into the Contract Documents and the Contractor shall comply with all their provisions.

The Contractor shall pay prevailing wages, keep records and provide reporting as required by the Federal Davis-Bacon Act and the State of California Labor Code. Contractor shall pay the higher wage between Federal and State prevailing wages for any work classification. Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These rates are set forth in the General Prevailing Wage Rates for this project are available at the California Department of Industrial Relations’ Internet website at https://www.dir.ca.gov/oprl/DPreWageDetermination.htm

Pursuant to Section 1775 of the Labor Code, the Contractor and any Subcontractors, shall, as a penalty to Owner, forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.

The Contractor shall provide certified payroll documents to Owner for all labor provided on the Project no later than 14 calendar days after the payday they represent. Owner may withhold progress payments until complete certified payroll documents are submitted.

Contractor shall maintain all payrolls and payroll records during the course of the project and shall preserve them for a period of three (3) years after all project workers have ceased work pursuant to this award. These records shall include the name, address, social security number, classification, hourly rates of wages paid (including bona fide fringe benefits or cash equivalents) daily and weekly hours worked, deductions made, and actual wages paid for each worker working on this project. The Contractor shall submit a copy of all payrolls and payroll records, which include all of the information above, to Owner once per week. Contractor shall use form WH-347 or an equivalent to submit copies of payrolls and payroll records. The Contractor shall obtain complete and accurate payrolls and payroll records from each subcontractor and submit a copy of all subcontractor payrolls and payroll records to Owner once per week. Each payroll submitted shall be accompanied by a “Statement of Compliance” signed by the Contractor of subcontractor or their agent that shall certify that (1) the payroll for the payroll period contains the information
required to be maintained under California law and that such information is correct and complete, (2) that each laborer or mechanic (including each helper, apprentice, and trainee) employed on the award during the payroll period has been paid the full weekly wages earned, without direct or indirect rebate, and without direct or indirect deductions, and (3) that each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination.

The Contractor shall correct all errors in the certified payroll documents or errors in pay to labor within 5 working days upon determination of an error by Owner or DIR. Owner may withhold 10% of any amount due up to $10,000 (or any amount allowable under California law) until all such errors are corrected.

The Contractor shall post a copy of the applicable prevailing wage rates at the work site that is readily accessible to all labor personnel at any time during the Project. Owner may withhold any payments due until the rates are posted and kept in this manner.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Pursuant to Section 1810 of the Labor Code, 8 hours of labor shall constitute a legal day's work. Pursuant to Section 1813 of the Labor Code, the Contractor and any Subcontractors shall pay to Owner as a penalty the prescribed amount per calendar day for each worker required or permitted to work more than 8 hours in any 1 calendar day and 40 hours in any 1 calendar week without being compensated in accordance with Section 1815.

As a condition of payment, the Contractor and subcontractors shall comply with all other requirements of the California Labor Code.

The Contractor shall defend, indemnify and hold Owner, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with all labor related laws.
15. **EMPLOYMENT OF APPRENTICES.** The Contractor’s is directed to the provisions of sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

16. **LIABILITY INSURANCE**

16.1 **General.** The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described herein. Surety companies and insurance companies shall familiarize themselves with all of the conditions and provisions of the Contract Documents, and they waive the right of special notification of any change or modification of the Contract Documents or of decreased or increased work or of the cancellation of the Contract, or of any other acts by Owner or any other additionally insured, under the terms of the Contract. Notwithstanding the provisions of any other contract or agreement, the failure of any surety company or insurance company to receive notification of any of the aforesaid changes shall in no way relieve the surety company or insurance company of its obligations under the Contract.

16.2 **Workers’ Compensation & Employer’s Liability Insurance.** Contractor shall provide during the life of this Contract, Employer’s Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars ($1,000,000.00) per person per accident. Contractor shall provide Owner with a certificate of Employer’s Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of Owner.

16.3 **Commercial General Liability Insurance.** Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, “occurrence” form Commercial General Liability insurance coverage, at least as broad as the most current ISO CAL Form 00 01 including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury, independent contractors, Completed Operations/Products (for ten [10] years after final completion) and Blanket Contractual, which may arise from or out of Contractor’s operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $1,000,000 per occurrence for bodily injury, personal injury and property damage and general aggregate limit of not less than Two Million Dollars ($2,000,000) (or current limit, if greater) providing at least all of the following minimum coverage (with deductibles or self-
insured retentions not to exceed $25,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits with Owner and others covered having the right to select legal counsel.

1. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability.

2. The limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor’s indemnification obligations to Owner and others and shall not preclude Owner from taking such other actions available to Owner under other provisions of the Contract Documents or law.

3. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor’s coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold Owner, its employees, elected officials, private consultants hired by Owner or volunteering to work on the project and volunteers harmless from any damage, loss, cost, or expense, including attorneys’ fees, incurred by the aforementioned as a result thereof.

4. All general liability policies provided pursuant to the provisions of this Article shall comply with all the provisions of the Contract Documents.

5. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, Owner may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

16.4 Automobile Liability Insurance. Contractor shall take out and maintain at all times during the term of this Contract a comprehensive “occurrence” form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars ($1,000,000) (or current limit carried, if higher) combined single limit for bodily injury and property damage, providing at least all of the following coverage (with deductibles or self-insured
retentions not to exceed $25,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to Owner. Such insurance shall comply with the provisions of the Contract Documents.

16.5 Builder’s Risk (“All Risk”). It is the Contractor’s responsibility to maintain or cause to be maintained Builder’s Risk [“All Risk”] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. Owner accepts no responsibility for the Work until the Work is formally accepted by Owner. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and Owner, its elected and appointed officers, agents, officials, employees, consultants and volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by Owner’s Board.

Policy shall be provided for replacement value on an “all risk” basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Owner to ensure adequacy and sublimit.

In addition, the policy shall meet the following requirements:

1) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
2) Coverage shall include all materials stored on Site and in transit.
3) Coverage shall include Contractor’s tools and equipment.

Such insurance, certificates and endorsements shall comply with all provisions of the Contract Documents.

16.6 Excess/Umbrella Liability. It is the contractor’s responsibility to maintain or cause to be maintained excess/umbrella liability insurance in the amount of $3 million dollars per occurrence/aggregate.
16.7 Architects and Engineers Professional Liability. Contractor, and/or Subcontractor, shall ensure the Design Professionals they hire, if any, or if the Contractor, and/or Subcontractor, will be doing any of the design work for this Project themselves they shall obtain and keep in full force and effect, Professional Liability coverage for professional liability with a limit of $2,000,000 per claim and $2,000,000 annual aggregate. The Contractor, and/or Subcontractor, shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Contractor, and/or Subcontractor, agrees that for the period defined above, there will be no changes or endorsements to the policy that increase the Jacobs Center for Neighborhood Innovation’s exposure to loss. All defense costs shall be outside the limits of the policy.

16.8 Deductibles. All deductibles on any policy shall be the responsibility of the Contractor and shall be disclosed to Owner at the time the evidence of the insurance is provided.

16.9 Additional Insured

Owner — To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the Jacobs Center for Neighborhood Innovation and the City of San Diego with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

City of San Diego — Each Contractor and any Subcontractor must endorse the policy or policies in accordance with the City of San Diego Insurance Requirements.

16.10 Form and Proof of Carriage of Insurance. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by Owner’s Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from Owner. At the election of Owner the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a “follow form” endorsement satisfactory to Owner indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

Contractor shall cause its insurance carrier(s) to furnish Owner with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting
coverage as required herein, or 2) if requested to do so in writing by Owner’s Risk Manager, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect.

Owner, its Board Members, officers, employees, agents, representatives, consultants, contract employees and volunteers shall be named as Additional Insureds on Contractor’s All Risk policy and on Contractor’s and its subcontractors’ policies of Commercial General Liability and Automobile Liability insurance using, for Contractor’s policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage), and, for subcontractors’ policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage).

All of the following endorsements are required to be made a part of each of the above described policies:

1. "Jacobs Center for Neighborhood Innovation and its elected officials, officers, employees, agents, representatives, consultants, contract employees and volunteers are hereby added as additional insures but only as respects work done by, for, or on behalf of the named insures."

2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Jacobs Center for Neighborhood Innovation and all other additionally insureds may possess, including self-insured retention, and any other insurance the Jacobs Center for Neighborhood Innovation and all other additionally insured do possess shall be considered excess insurance only."

3. "This insurance shall act for each insured, and additional insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

4. “All and each additionally insured shall have the right to select their own defense counsel.”

5. “Thirty (30) days prior written notice of cancellation shall be given to Owner in the event of cancellation and/or reduction in coverage of any nature. Such notice shall be sent to:

   Catherine Iste, Chief Operating Officer
   Jacobs Center for Neighborhood Innovation
   404 Euclid Avenue
   San Diego, CA 92114

   With a copy to:
   Selena Ellis-Vizcarra, Compliance and Project Manager
   Jacobs Center for Neighborhood Innovation
   404 Euclid Avenue
San Diego, CA 92114

6. “All policies of insurance shall contain a provision under which the insurance carrier waives its rights of subrogation with respect to Owner and the other parties names as additional insureds”

Certificates of Insurance shall be submitted to Owner prior to commencement of the Work. The Contractor shall provide one copy of each required Certificate of Insurance for each copy of the Agreement. The Contractor shall furnish copies of separate certificates and endorsements for each Subcontractor. The Contractor agrees to furnish promptly to Owner originals of any endorsements issued after execution of the Contract amending the Contractor’s coverage or limits. The Contractor further agrees that, upon receipt of any notice of cancellation or alteration, the Contractor shall procure, within five (5) days, other policies of insurance similar in all respects to the policy or policies about to be canceled or altered. If the Contractor fails to provide acceptable policies of insurance, Owner may obtain such insurance at the cost and expense of Contractor.

Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder.

Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.

The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to Owner prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, Owner may terminate the Contract or stop the Work in accordance with the Contract Documents, unless Owner receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage’s set forth herein and the insurance required herein is in full force and effect.

Contractor shall not take possession, or use the Site, or commence operations under this Contract until Owner has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this section. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and Owner’s insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory. The Contractor shall provide
endorsement(s) to this effect, using ISO CG form 20 01 or endorsement(s) providing the exact same coverage, at Owner’s request.

Owner reserves the right to adjust the monetary limits of insurance coverage during the term of this Contract including any extension thereof if in Owner’s reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Article 29 unless otherwise agreed to in writing by Owner.

16.11 Investigation and Cooperation. Contractor agrees to assist in every manner possible in the reporting and investigation of any accident and, upon request, to cooperate with all interested insurance carriers in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required for the resolution of any claim or lawsuit.

16.12 Limitations. Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance that the Contractor should maintain, or the extent of the Contractor’s responsibility or liability for payment of damages resulting for the Contractor’s operations under the Contract. The carrying of the insurance specified herein shall not be construed to be a limitation of liability on the part of the Contractor or as a matter of law.

16.13 Payment. All costs for compliance with this section 16, liability insurance, shall be borne by the Contractor and there shall be no additional costs to Owner.

16.14 Other Insurance Provisions. Subcontractors shall obtain all insurance required and shall maintain, in full force and effect, such insurance during and all work performed in connection with the Owner's contract with the Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained and approved by the Owner.

In any dispute between Contractor and Subcontractor pertaining to Owner's contract with the General Contractor, Owner shall not be made a party to any judicial or administrative proceeding to resolve the dispute. General Contractor shall defend and indemnify Owner in any dispute between General Contractor and Subcontractor, should Owner be made a party to any judicial or administrative proceeding to resolve the dispute.

17. WORKERS COMPENSATION INSURANCE

17.1 General. The Contractor shall obtain, and at all times during performance of the Work or Contract maintain, workers’ compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case any of sublet Work, the Contractor shall require
the subcontractor similarly to provide workers’ compensation insurance for all the latter’s employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor’s insurance shall be covered by the Contractor’s insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers’ Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with Owner certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to Owner, if in the form and coverage as set forth in the Section 7-3. Endorsement No. 5 listed above is the only endorsement required to be made a part of the Workers Compensation and Employers’ Liability policy.

17.2 Payment. All costs for compliance with section 17 WORKERS COMPENSATION INSURANCE shall be borne by the Contractor and there shall be no additional costs to Owner.

18 PUBLIC CONVENIENCE AND SAFETY

18.1 General. The Contractor's operations shall cause no unnecessary inconvenience to the public or businesses near the Work. The Contractor shall have no greater quantity of Work under construction than can be properly prosecuted with a minimum of inconvenience to the public and other contractors engaged in adjacent or related work.

The Contractor shall provide continuous and unobstructed access along at least one side of Chollas Creek at all times and shall post appropriate directional signage to guide pedestrians to an unobstructed path through the Site.

Upon completion of each day's work, the contractor shall be responsible for leaving the work area free of hazards and shall provide all necessary temporary signs, warning devices and barricades. Access is to be provided for all adjacent businesses at all times.

Construction activity shall be limited to the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, unless otherwise specifically approved by Owner.

Street closures or restrictions require prior approval by Owner. Therefore, the contractor shall submit all requests for full street closures, including a separate detour plan, to Owner a minimum of 15 days in advance of construction. If approved, the Contractor shall notify both the Police and Fire Departments a minimum of 1 week in advance of the closure, and immediately after re-opening of the street.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to adjacent property owners.
18.3 Pedestrian Access. Pedestrian access shall be maintained on at least one route through the Site at all times, unless otherwise approved by Owner.

Contractor shall comply with the latest requirements of the American Disability Act (ADA) Accessibility Guidelines and the California Accessibility Guidelines to maintain safe pedestrian access, including access for all persons with disability, through work areas. Typical measures include, but are not limited to, use of flagmen to stop traffic, construction of temporary sidewalks and access ramps, creation of secure pathways that provide buffers from open trenches, equipment and traffic, and use of advanced warning signs with directional arrows leading pedestrians to alternative, nearby crossing locations.

18.4 Payment. Payment for all labor, materials and equipment used for compliance with this section shall be considered as included in the Cost of the Work.

19. Hours of Operation. Construction work is to be performed only during the hours between 7:00 am and 5:00 pm Monday through Friday, unless special permission has been obtained from Owner. Unless otherwise authorized by Owner.

20. PATENTS, TRADEMARKS, AND COPYRIGHTS. The Contractor must pay, at no additional cost to Owner, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Contractor must defend all suits or claims for infringement of patent, trademark, and copyrights against Owner and any other Indemnified Parties, and must save Owner and any other Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work on the Project, such costs to be paid at no additional cost to Owner, except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by Owner, other than pursuant to the Contractor’s recommendation or suggestion; provided however, if the Contractor has reason to believe that the design, process or product so specified is an infringement of a patent, the Contractor will be responsible for any loss resulting unless the Contractor has provided Owner with prompt written notice of the Contractor’s belief, and Owner has nevertheless elected to go forward with such design, process, or product so specified.

21. ADVERTISING. The names, addresses and specialties of contractors, Subcontractors, or Architects may not be displayed on Owner property without permission, which may be withheld at Owner’s sole discretion.

Commercial advertising matter shall not be attached to or painted on the surfaces of buildings, fences, canopies, or barricades.
Any advertisement referring to Owner as a user of a product, material, or service by the Contractor or any Subcontractor and Supplier is expressly prohibited without Owner’s prior written approval.

22. LAWS TO BE OBSERVED. The Contractor shall keep itself fully informed of State and national laws and County and municipal ordinances and regulations which in any manner affect those employed in the Work or the materials used in the Work or in any way affect the conduct of the Work. The Contractor shall always observe and comply with such laws, ordinances, and regulations.

The Contract shall be governed by the law of the State of California applicable to contracts to be performed wholly within the State of California.

Rules of law shall prevail over any provision contained in any of the Bid and Contract Documents which may be in conflict thereto or inconsistent therewith.

The Contractor shall conform to and abide by all local, State and Federal building, sanitary, health and safety laws, rules, and regulations, including all City ordinances and regulations. To the best knowledge and belief of the parties, the Bid and Contract Documents contain no provision that is contrary to Federal or State law or any ruling or any regulations of a Federal or State Owner. Should, however, any provisions of the Bid and Contract Documents at any time during its term be in conflict with any such law, ruling or regulation, and such provisions of the Bid and Contract Documents are thus held inoperative, the remaining provisions of the Bid and Contract Documents shall, nevertheless, remain in full force and effect.

Whenever the provisions of any chapter of the Bid and Contract Documents may conflict with any agreement or regulation of any kind in force among members of any trade association, union or council which regulates or distinguishes what work shall or shall not be included in the work of any particular trade, the Contractor shall make all necessary arrangements to reconcile any such conflict without recourse to Owner.

22.1 Americans with Disabilities Act

1. The Contractor must warrant and certify that all Project Plans and Specifications prepared by the Contractor, if any, in accordance with the Contract meet all current requirements of the California Building Code, California Code of Regulations, Title 24 (Title 24) and the Americans with Disabilities Act (ADA) and the ADA Standards for Accessible Design. As a condition precedent to Award of the Contract, submit to Owner the Contractor/Design-Builder Certification for Title 24/ADA Compliance.

2. The Contractor must comply with all portions of the ADA and Title 24. For specific services and public accommodations, the Contractor may contact the Office of the Americans with
3. The Contractor is responsible for administering their own ADA and Title 24 program. The Contractor must ensure that these ADA requirements are included in the Subcontracts.

4. The Contractor must pay all claims, costs, losses and damages incurred by Owner in undertaking remedial action to correct violations of ADA or Title 24 of the Contractor. To effectuate remedial action, Owner will issue a Change Order incorporating the necessary revisions in the Construction Documents. Owner will be entitled to an appropriate decrease in the Contract Price, and, if the Parties are unable to agree as to the amount thereof, Owner may unilaterally issue the Change Order while the dispute is resolved.

5. The Contractor must not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

6. No qualified individual with a disability may be excluded on the basis of disability, from participation in, or be denied the benefits of services, programs, or activities by the Contractor or Subcontractors providing services for Owner.

7. The Contractor must post a statement addressing the requirements of the ADA in a prominent place at the worksite.

8. The Contractor must require in each Subcontract that the Subcontractor abide by these provisions. The Contractor and Subcontractors are individually responsible for the Contractor’s own ADA employment programs.

23. HOLD HARMLESS AND INDEMNIFICATION. To the fullest extent permitted by law, the Contractor shall protect, indemnify, defend (with counsel selected and satisfactory to the party being held harmless and indemnified) and hold harmless Owner, the Successor Owner, (if any), and all private consultants hired by Owner or volunteering to work on the project and for each their elected officials, appointees, officers, agents, employees, contract employees, consultants, heirs and assigns from and against any and all types of liability, causes of action, claims, damages, demands, losses, expenses (including, but not limited to all attorneys' fees and legal costs), arising out of or resulting from, either directly or indirectly:

(1) the performance of their work;

(2) the Work until the Project is accepted as final by Owner;
(3) the breach of the covenants or the obligations of the Contractor under the Contract, including but not limited to,

a) violations of or a failure to comply with any safety order, rule, code or regulation,
b) defective or non-compliant work, or
c) any and all liens, stop notices, charges of every type, nature or kind which may be at any time filed or claimed against the Project or any portion thereof, or Owner as a consequence of acts of the Contractor, his Subcontractors, material suppliers or others for which they are responsible, provided that Owner is not in default of its payment obligations under the Contract;

(4) any equal opportunity, unemployment, withholding, social security, workers' compensation or other employee benefit claims with respect to the Contractor or any Subcontractor arising out of the Work; or

(5) violation of any local, State or Federal law, regulation or code by Contractor or any Subcontractor.

(6) Any intentional act by the Contractor or any of the Contractor’s subcontractors of any tier, suppliers, employees, agents, officers, owners, consultants and volunteers.

Except as specifically limited as set forth below, the indemnification by the Contractor of the indemnified parties under this section shall apply regardless of any concurrent or contributory active and/or passive negligent act or omission of any indemnified party; provided, however, that the Contractor should not be obligated to indemnify a party for liability arising from the sole negligence or willful misconduct of the indemnified party. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. Such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of each and every held harmless and indemnified party, by counsel selected by each and every held harmless and indemnified party. Contractor’s indemnification obligations as set forth in this section shall not terminate on completion of the Work but shall survive in perpetuity.

In any and all claims against Owner, the Successor Owner, (if any), and all private consultants hired by Owner or volunteering to work on the project and for each their elected officials, appointees, officers, agents, employees, contract employees, consultants, heirs and assigns by any employee of the Contractor, any Subcontractor, any supplier of the Contractor or Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or any supplier of either of them under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
The provisions in this section shall survive the termination or expiration of the Contract until such time as action against any indemnified party on account of the matter covered by the indemnity is barred by the applicable statute of limitations and shall not be limited in any way by the amount of insurance obtained by any indemnified party.

24. CONFLICT OF INTEREST. The Contractor shall establish and make known to its employees appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Project personnel must not accept gratuities or any other favors from Subcontractors or potential subcontractors.

The Contractor is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, e.g., California Government Code §§1090, et. seq. and 81000, et. seq. If, in performing the Work, the Contractor makes, or participate in, a “governmental decision” in accordance with title 2, §18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for Owner that would otherwise be performed by an Owner employee holding a position specified in the applicable department’s conflict of interest code, the Contractor will be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor’s relevant financial interests.

If required, statements of economic interests must be made on Fair Political Practices Commission Form 700 and filed with Owner. The Contractor must file a Form 700 (Assuming Office Statement) within 30 days of Owner’s written determination that the Contractor will be subject to a conflict of interest code. File a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Contractor were subject to a conflict of interest code.

If the Contractor employed on the Project must not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Contractor must not recommend or specify any product, supplier, or contractor with whom the Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If the Contractor violates any conflict of interest laws or any of these conflict of interest provisions, the violation will be grounds for immediate termination of this Contact. Further, the violation subjects the Contractor to liability to Owner for all damages sustained as a result of the violation.
25. DELIVERED MATERIALS. Owner may pay for 50% of the cost of materials and equipment delivered to the project but not incorporated into the Work in the following progress payment if the Architect determines that sufficient safeguards have been taken by the Contractor to protect the materials and equipment. Payment does not relieve the Contract of the responsibility and liability for installing and incorporating the materials and equipment into the work in an “as new” condition. The Contractor shall at all time be responsible for all materials and equipment until the project is accepted by Owner. The Architect may reject any material and equipment that is not in a new condition or is damaged in any way, whether paid for or not. Materials and equipment not secured on the Site or a secured yard in the City limits will not be eligible for payment until they are incorporated into the project.

26. MOBILIZATION/DEMOBILIZATION. Mobilization and demobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the move-on and move-off operations of personnel, equipment, supplies, and incidentals to the Site, for the establishment of all offices, storage yards, buildings, hook-up and disconnects for utility services, and other facilities necessary for work on the Project, and for all other work and operations including the application for and acquiring of permits from other agencies, which must be performed or costs incurred prior to beginning work on the various items of work on the Project Site.

When applicable, Mobilization/Demobilization shall be paid for at the Contract lump sum price bid. The lump sum price for Mobilization/Demobilization shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, overhead, taxes, fees and profit for doing all the work involved in mobilization and demobilization. When the Contract does not include a contract pay item for mobilization and demobilization full compensation for any necessary mobilization and demobilization required shall be considered as included in the relevant items of work and there will be no additional costs to Owner.

Payments for Mobilization/Demobilization will be made in accordance with the following schedule:

(i) 60% after construction begins.
(ii) 40% after acceptance of the completed project by Owner.

27. PROMPT PAYMENT. Not later than ten (10) days after receipt of each progress payment, the Contractor or Subcontractor shall pay to any subcontractor the respective amounts allowed the Contractor on account of the work performed by the Subcontractor to the extent of each Subcontractor’s interest therein, unless the parties have agreed otherwise in writing. In cases of Subcontractor performance deficiencies, the Contractor shall make written notice of any withholding to the Subcontractor with a copy to Owner. Upon correction of the deficiency, the Contractor shall pay the Subcontractor the amount previously withheld not later than 14 days
after payment by Owner. Any violation of California Business and Professions Code, § 7108.5 concerning prompt payment to Subcontractors shall subject the violating Contractor or Subcontractor to the penalties, sanction and other remedies of that section. This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the Prime Contractor or a subcontractor, deficient subcontract performance, or noncompliance by a subcontractor.

27.1 Prompt Payment of Funds Withheld to Subcontractors. The Contractor shall promptly pay all subcontractors for all monies due as the Work progresses after receiving payment from Owner in accordance with California law.

For federally funded projects only federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with Owner’s prior written approval. Any violation of this provision shall subject the violating the Contractor or Subcontractor to the penalties, sanctions and other remedies specified in § 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by Contractor or subcontractor, deficient subcontract performance, or noncompliance by a subcontractor.

Further for federally funded projects only:

Upon completion of any item of work that is determined by the Architect as complete and in place, is not put at risk by other items of work and its function, stability and use is not dependent upon other items of work yet completed, may be paid in full upon completion and acceptance of the following additional items:

a. Final inspection for that item is complete and accepted.
b. Contractor delivers a written and signed certification to Owner that the item of work is complete, and that its function, stability and use is not dependent upon other items of work yet to be completed.
c. Architect accepts the certification and confirms the information and assertions.
d. All tests and reports relating to that item of work are submitted and accepted by Owner.
e. Contractor delivers all warranties, manuals, tests and certifications as required in the contract documents for that item of work.
f. Final inspection for that item of work is complete and accepted.
g. All certified payroll documents relating to that item or work are submitted and accepted by Owner as complete and correct.
h. There are no active Stop Payment Notices relating to that item of work.
i. Any payment made under this section is subject to an accounting and approval by Owner that such payment is due and not offset by deficiencies, back charges, liquidated damages or other items.
j. Contractor shall submit an executed Conditional Release Upon Final Payment from the prime contractor and sub-contractor(s) involved in that item of work.

Payment shall be made during the regular invoice cycle and identified on the billing statement and coversheet as paid in-full for that item of work.

28. WAIVER OF CLAIMS. Submission of an invoice labeled “final invoice” in any way shall constitute a waiver of any and all claims not already submitted by the Contractor and releases Owner, the Successor Owner, and all private consultants hired by Owner or volunteering to work on the project and for each their elected officials, appointees, officers, agents, employees, contract employees, consultants, heirs and assigns from all claims and all liability for all things done or furnished in connection with the Work, and every act of Owner, the Successor Owner, and all private consultants hired by Owner or volunteering to work on the project and for each their elected officials, appointees, officers, agents, employees, contract employees, consultants, heirs and assigns and others relating to or arising out of the Work and related to those undisputed amounts. No payment, however, final or otherwise, will release the Contractor and the Surety from obligations under the Contract and the Performance Bond, Payment Bond, and other bonds and warranties as herein provided.

29. NOTICE OF THIRD PARTY CLAIMS. Pursuant to Public Contract Code section 9201, Owner shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

30. STATE LICENSE BOARD NOTICE. Contractors are required by law to be licensed and regulated by the Contractors’ State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P.O. Box 26000, Sacramento, California 95826.

31. INTEGRATION

1. These Contract Documents, together with its incorporated documents, contains the entire, integrated agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void.
2. Any modification of this Contract shall only be effective if in writing signed by all parties.

3. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

32. PRECEDENCE OF CONTRACT DOCUMENTS. If there is a conflict between any of the Contract Documents, the documents highest in precedence shall control. A conflict is where one item is shown differently in two locations and both indications of the item cannot be constructed or produced. An omission of an item in one area of the plans or specifications but shown in another is not a conflict but shall be considered included in all. The precedence shall be as follows:

1) Permits as may be required by law.
2) California Building, Mechanical, Electrical and Plumbing codes
3) Change Orders and Supplemental Agreements; whichever occurs last.
4) Special Provisions of the Bid Documents
5) Contract/Agreement
6) Addenda
7) Bid Notice and instructions
8) Project Plans and Specifications
9) “Greenbook” and “Whitebook” Standard Specifications for Public Works Construction, as applicable to this project
10) Reference Specifications/Standards. (If a referenced specification or standard other than other than those listed above is directly called out to control a particular item of work, it shall assume the same position in the order or precedence as the project plans and specifications.)

Detail drawings shall take precedence over general drawings.
SAMPLE CONSTRUCTION CONTRACT

Owner will utilize AIA contract documents, including, but not limited to:

Contents

1. AIA 101 (2017) - STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR, where the basis of payment is a Stimulated Sum
3. AIA A201 (2017) – GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
4. AIA G701 (2017) – CHANGE ORDER
5. AIA G702 (1992) – APPLICATION AND CERTIFICATE FOR PAYMENT
6. AIA G703 (1992) – CONTINUATION SHEET
8. AIA G714 (2017) – CONSTRUCTION CHANGE DIRECTIVE
10. HUD Form 1040 – OVERTIME AUTHORIZATION

THE SAMPLE AIA DOCUMENTS POSTED SEPERATELY FROM THIS BID PACKAGE
Instructions

1. Form HUD-1040 will be used to request and obtain approval for all overtime, holiday or compensatory hours. Nonexempt employees must be paid overtime - compensatory hours are not authorized.
2. Each request will be fully justified as to the reason that the work could not be done during regular working hours.
3. Form HUD-1040 will be completed and signed by the supervisor requesting the work to be performed.
4. Supervisors will retain a copy of Form HUD-1040 as a means for controlling the overtime worked by nonexempt employees.
5. Form HUD-1040 will be approved by the designated approving official in advance of the work being performed and returned to the employee’s timekeeper.
6. Form HUD-200.2 will be approved, when required, after the fact to adjust overtime hours based on hours actually worked.
7. Timekeepers will use the Forms HUD-1040 and HUD-200.2 to post overtime on T & A Reports.

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<th>Name of Employee:</th>
<th>Name of Office/Division to which Employee is Assigned:</th>
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<tr>
<td>Overtime, Holiday or Compensatory Hours:</td>
<td>Date Work to be Performed:</td>
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<td>Purpose of Overtime:</td>
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<td>Justification:</td>
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<th>Date:</th>
<th>Requested by:</th>
<th>Name of Office/Division:</th>
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<td>Date:</td>
<td>Approved by:</td>
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CERTIFIED PAYROLL GUIDELINES

AT THE START OF THE JOB PLEASE PROVIDE THE FOLLOWING FOR EACH CONTRACTOR / SUB CONTRACTOR:

1. A list of all trades & crafts anticipated on the job (see separate example sheet). For example, if the project is calling for state prevailing wages, the relevant information can be found on www.dir.ca.gov/OPRL/PWD/index.htm. If the project is calling federal rates, the rates can be found on www.wdol.gov/dba.aspx. Make sure you check if the project is state or federal.
2. If fringes are paid directly to a plan (partly or in full), provide fringe benefit statements for all crafts anticipated
3. Copies of DAS 140 and DAS 142 with proof of mission (if applicable)
4. Proof of payment of training dues (if applicable)
5. A list of all sub contractors anticipated on the job (applies to main contractor only)
6. A signed Authorization Form for main contractor and sub contractors

SB854 Law:
• Contractor and sub contractors must be registered with the DIR and pay the annual fee when bidding and/or working on a public works project
• All public works contractors and sub contractors are required to furnish certified payroll records (online) directly to DIR in addition to providing one set of originals to the Agency per its terms and conditions

Note:
• The start date of the job is payroll week #1 for the main contractor and every sub contractor on the job, regardless of being on the job at the beginning or not.
• For each week provide either a payroll report with statement of compliance OR where no work is performed a statement of non-performance for all contractors/sub contractors. The only exception: The weeks before the initial work start can be grouped into 1 statement of non-performance as long as the entire time frame is specified. Otherwise a statement of non-performance is required weekly.
• When a contractor/sub contractor has completed their work on the job, a FINAL statement of non-performance is required. This can be identical to a regular statement of non-performance except it needs to specify that it is the final statement.
• It is imperative payroll documents are received complete and promptly in order to authorize the contractor’s invoices. Therefore, send 1 set of originals with wet signatures as promptly as possible.
### PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

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<th>FOR WEEK ENDING</th>
<th>PROJECT AND LOCATION</th>
<th>PROJECT OR CONTRACT NO.</th>
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<tr>
<th>NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER</th>
<th>(2) WORKER CLASSIFICATION</th>
<th>(3) DAY AND DATE</th>
<th>(4) HOURS WORKED EACH DAY</th>
<th>(5) TOTAL HOURS</th>
<th>(6) RATE OF PAY</th>
<th>(7) GROSS AMOUNT EARNED</th>
<th>(8) DEDUCTIONS</th>
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each labor or mechanic has been paid not less than the proper Davis-Bacon prevailing wages rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

---

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

(over)
Date ________________

I, ___________________________ ___________________________ (Name of Signatory Party) (Title)
do hereby state:

(1) That I pay or supervise the payment of the persons employed by ___________________________ (Contractor or Subcontractor) on the ___________________________ (Building or Work) that during the payroll period commencing on the _______ day of __________, _______ and ending the _______ day of __________, _______, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said ___________________________ (Contractor or Subcontractor) weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

________________________________________________________________________

________________________________________________________________________

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ — in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ — Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

<table>
<thead>
<tr>
<th>EXCEPTION (CRAFT)</th>
<th>EXPLANATION</th>
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</table>

REMARKS:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 31 OF TITLE 31 OF THE UNITED STATES CODE.
**PUBLIC WORKS PAYROLL REPORTING FORM**

<table>
<thead>
<tr>
<th>PAYROLL NO.:</th>
<th>(4) DAY</th>
<th>(5)</th>
<th>(6)</th>
<th>SELF-INSURED CERTIFICATE NO.:</th>
<th>PROJECT OR CONTRACT NO.:</th>
<th>PROJECT AND LOCATION:</th>
</tr>
</thead>
<tbody>
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<td>W</td>
<td>TH</td>
<td>F</td>
<td>S</td>
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<td></td>
<td>HOURS WORKED EACH DAY</td>
<td>DATE</td>
<td>TOTAL HOURS</td>
<td>HOURLY RATE OF PAY</td>
<td>GROSS AMOUNT EARNED</td>
<td>DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS</td>
</tr>
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S = STRAIGHT TIME
O = OVERTIME
SDI = STATE DISABILITY INSURANCE

*OTHER – Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary.
I, ________________________________, the undersigned, am the
(Name – print)
____________________________________ with the authority to act for and on behalf of
(Position in business)
____________________________________, certify under penalty of perjury
(Name of business and/or contractor)
that the records or copies thereof submitted and consisting of ______________________________
(Description, number of pages)
are the originals or true, full, and correct copies of the originals which depict the payroll record(s)
of the actual disbursements by way of cash, check, or whatever form to the individual or
individuals named.

Date: ____________________________ Signature: ____________________________

A public entity may require a stricter and/or more extensive form of certification.
STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

STATEMENT OF COMPLIANCE

CEM-2503 (REV 8/1996)

I do hereby certify under penalty of perjury:

(1) That I pay or supervise payment to employees of the above-referenced contractor on the above-referenced contract. All persons employed on said project for the above-referenced time period have been paid their full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said contractor from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person other than permissible deductions.

(2) That any payrolls otherwise under this control required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less that the applicable wages rates:
   (a) Specified in the applicable wage determination incorporated into the contract;
   (b) Determined by the Director of Industrial Relations for the county or counties in which the work is performed; that the classification set forth therein for each laborer or mechanic conform with the work he or she performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(4) That fringe benefits as listed in the contract:
   (a) Have been or will be paid to the approved plan(s), fund(s), or program(s) for the benefit of listed employee(s), except as noted below.
   (b) Have been paid directly to the listed employee(s), except as noted below.
   (c) See exceptions noted below.

EXCEPTION CRAFT   EXPLANATION

___________________________________________
___________________________________________
___________________________________________
___________________________________________

REMARKS:

___________________________________________
___________________________________________
___________________________________________
___________________________________________

NAME (PLEASE PRINT.)   TITLE

SIGNATURE   DATE


Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (See section 1001 of title 18 and section 3729 of title 31 of the United States Code).

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CEM2503
STATEMENT OF NON-PERFORMANCE

Name of Contractor / Subcontractor: __________________________

Payroll Number(s): #__________

Final Statement of Non Performance (Please circle): Yes No

Payroll Week Ending Date: _________________

I do hereby state that no mechanics, laborers, apprentices or trainees were
employed on the construction site of the Project __________________________
_____________________________ during the payroll period commencing on
the ____ day of _______ 20____ and ending the ____ day of _________, 20____.

Signature of Authorized Person: __________________________

Title: __________________________

Date: __________________________
# LIST OF TRADES & CRAFTS

**PROJECT NAME:**

**CONTRACTORS NAME:**

**PAYROLL CONTACT PERSON:**

**PHONE:**

**EMAIL:**

**DATE:**

<table>
<thead>
<tr>
<th>TRADE OR CRAFT</th>
<th>PREVAILING WAGE CLASSIFICATION &amp; GROUP</th>
<th>DETERMINATION NUMBER</th>
<th>PAGE NUMBER</th>
<th>FEDERAL/STATE</th>
<th>EXPIRATION</th>
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**Note:**

* Denotes rate is good for the life of the project

** Denotes predetermined increase
## LIST OF TRADES & CRAFTS

**EXAMPLE ONLY – TO SHOW HOW TO FILL THIS IN CORRECTLY**

**PROJECT NAME:** National City Street Resurfacing  
**CONTRACTORS NAME:** XYZ Construction Inc.  
**PAYROLL CONTACT PERSON:** Pete Smith  
**PHONE:** 619 111 2222  
**EMAIL:** petesmith@xyzconstruction.com  
**DATE:** 2nd April 2016

<table>
<thead>
<tr>
<th>TRADE OR CRAFT</th>
<th>PREVAILING WAGE CLASSIFICATION &amp; GROUP</th>
<th>DETERMINATION NUMBER</th>
<th>PAGE NUMBER</th>
<th>FEDERAL/STATE</th>
<th>EXPIRATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>LABORER (CONSTRUCTION-FENCE ERECTOR-HOUSEMOVED)</td>
<td>LABORER: ENGINEERING CONSTRUCTION, GROUPS 1 &amp; 5</td>
<td>SD-23-102-3-2012-1</td>
<td>30</td>
<td>STATE</td>
<td>June 30, 2013**</td>
</tr>
<tr>
<td>LABORER AND RELATED CLASSIFICATIONS</td>
<td>LABORER: BUILDING CONSTRUCTION, GROUPS 1, 2, 4</td>
<td>SD-23-102-4-2012-1</td>
<td>29</td>
<td>STATE</td>
<td>June 30, 2013**</td>
</tr>
<tr>
<td>OPERATING ENGINEER</td>
<td>GROUPS 2, 4, &amp; 8</td>
<td>SD-23-63-3-2011-2</td>
<td>25</td>
<td>STATE</td>
<td>June 30, 2012*</td>
</tr>
<tr>
<td>PARKING AND HIGHWAY IMPROVEMENT (STRIPING, SLURRY AND SEAL COAT OPERATIONS-LABORER)</td>
<td>GROUPS 2 &amp; 4</td>
<td>SC-23-102-6-2011-1</td>
<td>18E</td>
<td>STATE</td>
<td>June 30, 2012*</td>
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</tbody>
</table>

**Note:**  
* Denotes rate is good for the life of the project  
** Denotes predetermined increase
STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
FRINGE BENEFIT STATEMENT
CEM-2501 (REV 8/2014)

TO: RESIDENT ENGINEER OR DISTRICT LABOR COMPLIANCE OFFICER

BRAINCOURT OF EMPLOYEES IN VARIOUS CRAFTS OR CLASSIFICATIONS TO CHECK PAYROLL OR APPLY TO FORCE ACCOUNT WORK ON THE ABOVE CONTRACT.

COMPLETE AND SUBMIT THIS FORM WITH THE FIRST CERTIFIED PAYROLL OR WHEN THERE HAVE BEEN CHANGES.

<table>
<thead>
<tr>
<th>Classification</th>
<th>Fringe Benefit Hourly Amount</th>
<th>Name and Address of Plan, Fund, or Program</th>
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<tbody>
<tr>
<td>Vacation</td>
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<td>Health and Welfare</td>
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<td>Pension</td>
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<td>Apprentice or Training Fees</td>
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<td>Other</td>
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Effective Date

Subsistence and/or Travel Pay $____

Classification | Fringe Benefit Hourly Amount | Name and Address of Plan, Fund, or Program |
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<td>Vacation</td>
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Effective Date

Subsistence and/or Travel Pay $____

Classification | Fringe Benefit Hourly Amount | Name and Address of Plan, Fund, or Program |
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<td>Other</td>
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Effective Date

Subsistence and/or Travel Pay $____

I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs listed above.

NAME AND TITLE (Please Print)

SIGNATURE

BUSINESS TELEPHONE NUMBER

If you have questions about this form, refer to the map at [www.dot.ca.gov/hq/construc/LaborCompliance/documents/D-R_Map.pdf](http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/D-R_Map.pdf) for contact information in the district where the project is located.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.
### FRINGE BENEFIT STATEMENT

**STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION**

**FRINGE BENEFIT STATEMENT**

CEM-2501 (REV 8/2014)

**CONTRACTOR OR SUBCONTRACTOR (Please Print):**
ABC Contracting

**TO: RESIDENT ENGINEER OR DISTRICT LABOR COMPLIANCE OFFICER:**
Project Professionals Corporation
4499 Ruffin Road, Suite 250
San Diego, CA 92123

**CONTRACT NUMBER:**
CIP No. 17-01

**FEDERAL-aid PROJECT NUMBER:**
DIR Project No. XX

**DATE:**
1/1/2017

**LABORER: BUILDING CONST.**
Group 1, 2, 3

**Effective Date:**
6/1/2017

**Subsistence and/or Travel Pay:**
$ .535 per mile

**Fringe Benefit Hourly Amount**

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<tr>
<th>Classification</th>
<th>Fringe Benefit Hourly Amount</th>
<th>Name and Address of Plan, Fund, or Program</th>
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</thead>
<tbody>
<tr>
<td>Laborer: Building Const. Group 1, 2, 3</td>
<td>Vacation $4.00</td>
<td>Paid directly to Employee</td>
</tr>
<tr>
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<td>Health and Welfare $6.81</td>
<td>Kaiser Permanente</td>
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<td>Pension $5.30</td>
<td>XYZ Pension</td>
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<tr>
<td></td>
<td>Apprentice or Training Fees $95</td>
<td>CA Apprenticeship Council</td>
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<tr>
<td></td>
<td>Other $1.03</td>
<td>Paid directly to Employee</td>
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</tbody>
</table>

**CLASSIFICATION**

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<tr>
<th>Classification</th>
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<td>Vacation $</td>
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<td>Apprentice or Training Fees $</td>
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<td>Other $</td>
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</tbody>
</table>

I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs listed above.

**NAME AND TITLE (Please Print):**
Pete Smith, HR/Payroll Administrator

**SIGNATURE:**

If you have questions about this form, refer to the map at [www.dot.ca.gov/hq/constr/LaborCompliance/documents/D-R_Map.pdf](http://www.dot.ca.gov/hq/constr/LaborCompliance/documents/D-R_Map.pdf) for contact information in the district where the project is located.

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CLOSE-OUT DOCUMENTS

1. CONTRACTOR'S CERTIFICATION OF COMPLETION
2. CONTRACTOR’S AFFIDAVIT OF DISPOSAL
3. CONSENT OF SURETY FOR FINAL PAYMENT
4. CONTRACTOR’S AFFIDAVIT OF PAYMENT
5. GUARANTEE AGREEMENT
CONTRACTOR'S CERTIFICATION OF COMPLETION

DATE: __________________________

TO: Richard Seges
   Vice President, Redevelopment
   Jacobs Center for Neighborhood Innovation
   404 Euclid Avenue
   San Diego, CA 92114

FROM: __________________________________________

(Firm or Corporation)

PROJECT: CONNECT ALL @ Jacobs Center Business Accelerator

This is to certify that I, acting as an authorized official of the above stated firm or corporation, have been properly authorized by said firm or corporation to sign the following statements pertaining to the subject contract:

1. I know, of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed, and materials used and installed in every particular, in accordance with, and in conformity to, the contract drawings and specifications.

2. The contract work is now complete in all parts and requirements, and ready for your final inspection.

3. I understand and agree that neither the determination by the Owner that the work is complete, nor the acceptance thereof by the Owner, shall operate as a bar to claim against the Contractor under the terms of the guarantee provisions of the contract documents.

Signature of Prime Contractor  Signature of Prime Contractor

Print name and title  Print name and title

(If the Prime Contractor is a corporation two signatures of corporate officers are required.)
CONTRACTOR’S AFFIDAVIT OF DISPOSAL

WHEREAS, on the ___ day of __________________, 20 ____, the undersigned entered into and executed a contract with The Jacobs Center for Neighborhood Innovation for CONNECT ALL @ Jacobs Center Business Accelerator as particularly described in said contract and identified as CIP No. 17-04; and

WHEREAS, the specifications of said contract requires the Contractor to affirm that "all brush, trash, debris, and surplus materials resulting from this project have been disposed of in a legal manner" and that all designated recyclable materials are properly recycled in compliance with the requirements of the City of San Diego Municipal Code.

WHEREAS, said contract has been completed, all surplus materials disposed of, and proof of compliance with the City of San Diego Municipal Code has been furnished.

NOW, THEREFORE, in consideration of the final payment by the Jacobs Center for Neighborhood Innovation to said Contractor under the terms of said contract, the undersigned Contractor, hereby certifies and affirms under penalty of perjury that all surplus materials as described in said contract have been disposed of at the following location(s):

<table>
<thead>
<tr>
<th>Type of material disposed of</th>
<th>Name of disposal site</th>
<th>Address of disposal site</th>
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<tbody>
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<tr>
<td>Type of material disposed of</td>
<td>Name of disposal site</td>
<td>Address of disposal site</td>
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</tr>
<tr>
<td>Type of material disposed of</td>
<td>Name of disposal site</td>
<td>Address of disposal site</td>
</tr>
</tbody>
</table>

By signing and submitting this form to The Jacobs Center for Neighborhood Innovation on this ___ day of __________, 20 ____, I (we) hereby certified and swear under penalty of perjury under the laws of the State of California that the aforementioned information is true and correct without omission, error or misrepresentation.

Signature of Prime Contractor ___________________________ Date __________

Signature of Prime Contractor ___________________________ Date __________

Print name and title ______________________________________

(Print name and title ___________________________)

(If the Prime Contractor is a corporation two signatures of corporate officers are required.)
CONSENT OF SURETY FOR FINAL PAYMENT
CONNECT ALL @ Jacobs Center Business Accelerator

In accordance with the provisions of the contract between the Owner and the Contractor, and the following named Surety:

__________________________________________________________
on the Payment Bond in the amount of ____________________________ Dollars,
of the following named Contractor: ____________________________
hereby approves of final payment to the Contractor, and further agrees that said final payment to the Contractor shall not relieve the Surety named herein of any of its obligations to the Owner, as set forth in said Surety company's bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand and seal this __________
day of____________________, 20 __________.

____________________________________________________
Signature of Authorized Surety Representative

____________________________________________________
Title

(CORPORATE SEAL)
CONTRACTOR’S AFFIDAVIT OF PAYMENT

To All Whom It May Concern:

WHEREAS, the undersigned has been contracted by The Jacobs Center for Neighborhood Innovation to furnish labor and materials for CONNECT ALL @ Jacobs Center Business Accelerator, under a contract dated the _____ day of _________________, 20___, in the City of San Diego, County of San Diego, State of California, of which The Jacobs Center for Neighborhood Innovation is the Owner.

NOW, THEREFORE, this _______ day of _________________, 20___ the undersigned, as the Contractor for the above-named Contract pursuant to the Conditions of the Contract hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or his property might in anyway be held responsible.

EXCEPTIONS: (If none, write "None". If required by the Owner, the Contractor shall furnish bond satisfactory to the Owner for each exception.)

_________________________________________  __________________________
Signature of Prime Contractor                      Date

_________________________________________  __________________________
Signature of Prime Contractor                      Date

Print name and title

_________________________________________
(If the Prime Contractor is a corporation two signatures of corporate officers are required.)
GUARANTEE AGREEMENT

We hereby guarantee that CONNECT ALL @ Jacobs Center Business Accelerator, has been installed in accordance with the drawings and specifications and that the work as installed will fulfill the requirements included in the specifications. The undersigned agrees to promptly repair or replace, in a manner satisfactory to the Engineer, any or all of such work, together with any other adjacent work which may be displaced in connection with such repair or replacement, that may prove to be defective in workmanship or material within a period of one (1) year from the date of acceptance of the above referenced project by the Jacobs Center for Neighborhood Innovation (“JCNI”), ordinary wear and tear and unusual abuse or neglect excepted.

The Contractor also agrees to indemnify and hold JCNI harmless from claims of any kind arising from damage due to said defects in the work constructed under the Contract.

In the event that the undersigned fails to comply with the abovementioned conditions within a reasonable period of time, as determined by JCNI, the undersigned hereby authorizes the City to proceed with the repair of said defects and the Contractor and his/her surety shall be liable to the JCNI for the cost thereof.

Firm name  Address

Signature of Prime Contractor or Sub-Contractor  Signature of Prime Contractor or Sub-Contractor

Print name and title  Print name and title

Countersigned (required by Prime Contractor if this Guarantee Agreement is for a Sub-Contractor):

Firm name  Address

Signature of Prime Contractor  Signature of Prime Contractor

Print name and title  Print name and title

Contact for Service:

Name

Address

Telephone number and email address
INVITATION FOR BID – APPENDIX 4

NCIP – FY18 – 002-00 Fiscal Year 2018 City of San Diego Community Development Block Grant Program Subrecipient Agreement
FISCAL YEAR 2018 CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM SUBRECIPIENT AGREEMENT

[COVER SHEET]

Subrecipient Name: Jacobs Center for Neighborhood Innovation

Term: This Agreement shall commence on 7/1/2017, (Effective Date), subject to approval by City Attorney in accordance with San Diego Charter Section 40, and shall continue until the earlier of [Term]: (a) completion of the Activity or (b) 6/30/2019

CFDA Number: CDBG -14.218

Activity Site/Location: 404 Euclid Avenue, San Diego California, 92114

Activity Title: Chollas Creek Gateways & Improvements

Activity Category: Nonprofit Capital Improvement Projects / Housing Rehabilitation

CDBG Activity Budget: $280,476.00

Leveraged Activity Budget: $38,160.00

City Council Approval Date: April 27, 2017

Resolution Number: R-311071

IO Number: FG1000003-18
**WBS Number:**

**IDIS Number:** 7070

**CDBG Grant Award Number:** B-17-MC-06-0542

**Consolidated Plan Goal:** Invest in community services and non-profit facilities that maximize impact by providing new or increased access to programs that serve highly vulnerable populations such as youth, seniors, and food insecure households.

**Consolidated Plan Strategy:** Goal 2: Objective 3

**HUD Matrix Code:** 03E Neighborhood Facilities

**CDBG Citation:** 570.201(c)

**National Objective:** LMA

**Project Outcome Measure:** Suitable Living Environment, Availability/Accessibility, Public Facilities

**Annual Units:** 1
IN WITNESS WHEREOF, this Agreement is entered into by the City of San Diego, acting by and through its Mayor or designee, pursuant to City Council Resolution R-311071, effective April 27, 2017, authorizing entry into this Agreement, and by Subrecipient, by and through the signature of Subrecipient’s authorized representative(s), as follow:

<table>
<thead>
<tr>
<th>Subrecipient Electronic Signature</th>
<th>Reginald Jones</th>
<th>10/12/2017 10:05 AM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic Development Department Electronic Signature</td>
<td>Lydia Moreno</td>
<td>10/12/2017 11:07 AM</td>
</tr>
<tr>
<td>Office of the City Attorney Electronic Signature</td>
<td>Delmar Williams</td>
<td>10/13/2017 1:45 PM</td>
</tr>
</tbody>
</table>

This Agreement is comprised of the following documents:

1. General Terms and Conditions;
2. Exhibit A – Budget;
3. Exhibit B – Conflict of Interest and Procurement Policy for Non-Profit Corporations Contracting with the City of San Diego;
4. Exhibit C – Insurance Requirements;
5. Exhibit D – Scope of Work;
6. Exhibit E – Additional Provisions Applicable to Improvements; and
7. Exhibit F – Real Property Restriction Form
GENERAL TERMS AND CONDITIONS

This Fiscal Year 2018 Community Development Block Grant Program Subrecipient Agreement [Agreement] is entered into by and between City and Subrecipient, as of the Effective Date. City and Subrecipient enter into this Agreement with reference to the following recited facts [Recitals]:

RECITALS

WHEREAS, City has entered into or will enter into a grant agreement with the United States Department of Housing and Urban Development [HUD] to receive Fiscal Year 2018 Community Development Block Grant [CDBG] entitlement funds; and

WHEREAS, City requested proposals for funding of eligible activities through City’s Fiscal Year 2018 CDBG program; and

WHEREAS, Subrecipient submitted a proposal to City that was selected for funding from City’s Fiscal Year 2018 CDBG program through City’s competitive proposal evaluation process; and

WHEREAS, Subrecipient’s proposal was approved for funding from City’s Fiscal Year 2018 CDBG program by City Council through its Resolution R-311071 effective April 27, 2017; and

WHEREAS, City desires to provide funding to Subrecipient through City’s Fiscal Year 2018 CDBG Program for performance of the Activity (defined in Section 1);

NOW THEREFORE, in consideration of the above Recitals, the covenants, conditions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. DEFINITIONS. In addition to the terms defined on the cover page to this Agreement or in the Recitals to this Agreement, the following terms in this Section 1 are defined for use in this Agreement:

1.1. Activity. Collectively, all actions to be performed by Subrecipient as described in the Scope of Work.

1.2. Budget. The total amount of CDBG Funds available pursuant to this Agreement for reimbursement of Activity costs, as set forth in Exhibit A.

1.3. CDBG. United States Department of Housing and Urban Development Community Development Block Grant program.

1.4. CDBG Funds. Funds allocated to City by HUD for City’s Fiscal Year 2018 CDBG program and disbursed by City to Subrecipient to reimburse certain Activity costs.

1.5. City. The City of San Diego, a California municipal corporation.

1.7. **Effective Date.** Defined on the Cover Sheet to this Agreement.

1.8. **Environmental Documents.** Any and all documents (if any) required to comply with the National Environmental Policy Act (42 U.S.C. sections 4321 - 4347) or the California Environmental Quality Act (Cal. Pub. Res. Code sections 21000 – 21178) for performance of the Activity.

1.9. **Federal.** Relating or pursuant to the authority of the federal government of the United States of America.

1.10. **Fiscal Year 2018.** City’s fiscal year starting July 1, 2017, and ending June 30, 2018.

1.11. **Grant Amount.** The total dollar amount of the Budget.

1.12. **HUD.** U.S. Department of Housing and Urban Development.

1.13. **Improvements.** Any and all alteration, demolition, repair, maintenance, construction, or improvement to real property that is part of the Activity.

1.14. **Intellectual Property.** All materials and deliverables subject to copyright protection that arise, or are developed in performance of this Agreement, including editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, Photostats, drawings, and other production materials, and for information technology [IT] procurements, executable code, source code, fixes patches, updates, upgrades, documentation embedded or otherwise, original copy, and other production materials.

1.15. **Notice.** Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing, which includes Notice by e-mail.

1.16. **Notify.** To give a Notice.

1.17. **Operating Manual.** City’s most current “Operating Manual” containing procedures for fiscal management and accountability for Activities receiving CDBG Funds.

1.18. **Parties.** Collectively, City and Subrecipient.

1.19. **Party.** Individually, either City or Subrecipient, as applicable.

1.20. **Playing by the Rules Handbook.** A HUD published handbook, dated March 2005, setting forth administrative recommendations applicable to entities receiving and using CDBG Funds.

1.21. **Program Income.** Any income that accrues to Subrecipient as a result of its receipt or use of CDBG Funds under this Agreement, as further described in 24 C.F.R. section 570.500(a).

1.22. **Records.** All administrative or financial records relating to the Activity prepared or gathered by Subrecipient, including all books, papers, invoices, receipts, accounting
records in accordance with Generally Accepted Accounting Principles [GAAP] and 2 C.F.R. section 200, payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigative videos, work product, and any other documents, data or records pertaining to any or all matters covered by this Agreement, or required by applicable provisions of 24 C.F.R. section 570.506 or the Operating Manual.

1.23. **Reporting Period.** Each calendar month during which any Work is performed.

1.24. **Scope of Work.** Exhibit D.


1.26. **Site.** The physical location where the Activity will take place.

1.27. **State.** The State of California.

1.28. **Subcontractor.** Any entity, other than City, furnishing material, labor or services to Subrecipient in connection with the Activity, pursuant to a contract with Subrecipient.

1.29. **Term.** Defined in the Cover Page to this Agreement.

1.30. **Work.** Any performance described in the Scope of Work.

2. **NATIONAL OBJECTIVES CERTIFICATIONS.** Subrecipient certifies that the Activity meets one of the national objectives for use of CDBG Funds pursuant to 24 C.F.R. section 570.208.

3. **BUDGET.** The total of all payments to be reimbursed to or on behalf of Subrecipient under this Agreement shall not, under any circumstances, exceed the Grant Amount. Subrecipient acknowledges and agrees that any expenditures by Subrecipient that are not within the prescribed limitations of the Budget or the Grant Amount, the Operating Manual, or applicable laws, rules, or regulations governing this Agreement, are not chargeable to the Activity under the Budget and shall be borne solely by Subrecipient.

4. **REIMBURSEMENT OF EXPENDITURES.**

4.1. **Reimbursement Requests.** Subrecipient shall make timely, complete requests for reimbursement in accordance with this Agreement, using forms and instructions provided by City. City will reimburse Subrecipient on a Reporting Period basis for eligible expenditures, provided that all reports from Subrecipient required under this Agreement (including those required by the Operating Manual) are received by City (on such forms as City may require) within fifteen (15) calendar days after the last day of the immediately preceding Reporting Period. The final payment to Subrecipient shall be withheld by City until all Reporting Period reports required from SubRecipient under this Agreement have been received by City. City additionally reserves the right to withhold ten percent (10%) of the total Budget, until Subrecipient has submitted all Activity closeout documentation to City. Subrecipient shall not be reimbursed for any expenditure without sufficient documentation that the expenditure is eligible for reimbursement and that such eligible expenditure has been paid in full by Subrecipient.

4.2. **Ineligible Expenditures.** Subrecipient shall not be reimbursed for travel, meals,
lodging, entertainment expenses, or alcoholic beverages, under any circumstances. Subrecipient shall not be reimbursed for any expenditures, directly or indirectly, during any period of Federal, State, City or other debarment, suspension, or ineligibility of Subrecipient from participation in the CDBG program, when Subrecipient has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility.

4.3. **Supporting Information.** Subrecipient shall provide to City authentic, accurate, and legible written documentation for all expenditures relating to the Activity and for which Subrecipient requests reimbursement under this Agreement on a Reporting Period basis. Written invoices from Subrecipient’s Subcontractors shall be provided to City in the form originally provided to Subrecipient, with no alterations or other markings on such invoices. Subrecipient shall make original invoices immediately available to City upon request. The documentation provided by Subrecipient to City shall include an itemized description of the completed work, the date such work was done, and all supporting invoices and documentation sufficient for City to adequately determine eligibility for reimbursement of each and every expenditure and that such expenditure has been paid in full by Subrecipient. Partial reimbursement may be made for reimbursement requests that receive only partial approval. Subrecipient’s Chief Executive Officer or Chief Financial Officer shall sign each and every request for reimbursement, attesting to its truthfulness and accuracy under penalty of perjury. Subrecipient acknowledges and agrees that City reserves the right to deny reimbursement for any request that is not properly submitted.

4.4. **Time for Submittal.** Subrecipient shall timely and properly submit a minimum of one request for reimbursement for each Reporting Period, even if Subrecipient did not make any expenditures in performance of the Activity that are reimbursable under this Agreement during the Reporting Period and the reimbursement request is for zero dollars ($0). Within forty-five (45) calendar days after the date of performance of any labor or services as part of the Activity or within forty-five (45) calendar days after receipt of an invoice for any expenditures incurred by Subrecipient relating to the Activity that are reimbursable under this Agreement, Subrecipient shall submit a request for reimbursement for such expenditure(s) to City. Any failure to so submit a reimbursement request may be deemed a waiver of Subrecipient’s right to reimbursement for such expenditure(s). Subrecipient shall submit to City any and all final requests for reimbursement, including any documentation substantiating the requests, within thirty (30) calendar days after the earlier of: (a) completion of the Activity; (b) expiration of the Term; or (c) termination of this Agreement. Subrecipient waives any and all right to submit any documentation of Activity expenditures or to receive reimbursement for any Activity expenditures submitted after such thirty (30) calendar day time period. Furthermore, any remaining CDBG Funds balance in the Budget for which a request for reimbursement has not been properly and timely submitted to City before the expiration of such thirty (30) calendar day time period shall be subject to reprogramming by City, without Notice to Subrecipient.

4.5. **Other Funding Sources.** If Subrecipient receives (or has received) additional funding for the Activity from a source or sources other than City, then Subrecipient shall charge Activity expenditures to the appropriate funding source at the time incurred. Any expenditure incurred in connection with the Activity that is properly chargeable to a funding source other than CDBG Funds allocated to the Activity under this Agreement shall not be allowed as a reimbursable Activity cost under this Agreement.

4.6. **Timely Expenditure.** Subrecipient acknowledges and understands that City must
comply with HUD’s requirement that CDBG Funds allocated for the Activity be expended in a timely manner and that City must monitor and administer all contracts involving City CDBG Funds. Subrecipient further acknowledges and agrees to expend all CDBG Funds allocated to the Budget and complete the Activity before expiration of the Term. Any CDBG Funds not expended by Subrecipient before expiration of the Term are subject to reprogramming by City Council without Notice to Subrecipient and will not be available to reimburse Subrecipient for any Activity costs incurred, after expiration of the Term.

4.7. Return of Improper Reimbursement. Upon the determination of City or HUD that any reimbursement provided to Subrecipient under this Agreement was for an ineligible expenditure or based on a fraudulent or other illegal submittal of a request for reimbursement by Subrecipient, Subrecipient shall return such funds to City within fourteen (14) calendar days after Notice to Subrecipient. Upon the determination of City or HUD that any reimbursement provided to Subrecipient was based on an inadequate or improper submittal of a request for reimbursement by Subrecipient, Subrecipient shall provide any and all documentation required by City or HUD to fully remedy such concern(s), within fourteen (14) calendar days after Notice to Subrecipient. If Subrecipient is unable or unwilling to provide documentation to fully remedy such concern(s), Subrecipient shall return the reimbursed funds to City within such fourteen (14) calendar day time period. In addition to the remedies set forth in Section17, if Subrecipient fails to timely return any funds to City in accordance with this Section4.7, City reserves the right to deduct such amounts from any future reimbursement becoming due to Subrecipient under this Agreement.

5. PROGRAM INCOME. Subrecipient may use Program Income for performance of the Activity, provided that Subrecipient submits to City a written budget detailing Subrecipient’s proposed use of Program Income and obtains prior written approval from City of such written budget, in City’s sole and absolute discretion. Subrecipient shall separately account for any and all Program Income accrued or used by Subrecipient in its Reporting Period reports under Section7 and in its annual audits or financial reports or statements submitted to City under Section8. If City approves Subrecipient’s written budget for use of Program Income, all provisions of this Agreement shall apply to the use of such Program Income. Subrecipient agrees that substantially all Program Income approved by City for use by Subrecipient shall be used by Subrecipient for eligible activities before Subrecipient requests disbursement of additional CDBG Funds from City. If City does not approve Subrecipient’s written budget for use of Program Income, Subrecipient shall return to City any and all Program Income balances (including investments thereof) held by Subrecipient within thirty (30) calendar days after the later of: (a) City’s Notice of disapproval of Subrecipient’s proposed budget; (b) expiration of the Term; (c) termination of this Agreement; or (d) Subrecipient’s receipt of the Program Income.

6. INSURANCE. Prior to the Effective Date and prior to Subrecipient’s performance of any Work, Subrecipient shall obtain all insurance coverage required in Exhibit C attached to this Agreement and deliver written certificates or policies of insurance evidencing all required insurance coverage to City. Subrecipient shall require and ensure that any and all Subcontractors obtain and maintain all of the insurance coverage required in Exhibit C. Neither Subrecipient nor any Subcontractor shall commence any Work, unless and until written evidence of all insurance required to be carried by Subrecipient and such Subcontractor under this Section6 has been submitted to and approved by City.

7. SUBRECIPIENT REPORTS.
7.1. **Periodic Reports.** Subrecipient shall submit to City a fiscal and programmatic report on a Reporting Period basis that summarizes Subrecipient’s expenditures in pursuing the Activity and progress on the Activity accomplished during the applicable Reporting Period, along with any and all invoices and other documentation required by City. Such a report shall be submitted within fifteen (15) calendar days after the end of each Reporting Period. Subrecipient shall participate in any annual reporting workshop regarding use of CDBG Funds, as requested by City.

7.2. **End of Agreement Report.** Subrecipient shall submit to City a report containing a narrative summary of the Activity progress as of the date of the report, a financial summary of Activity expenditures claimed to and reimbursed by City under this Agreement, and a list of any real property acquired or improved, in whole or in part, with CDBG Funds provided under this Agreement exceeding $25,000, all within thirty (30) calendar days after the earlier of: (a) completion of the Activity; (b) expiration of the Term; or (c) termination of this Agreement.

8. **SUBRECIPIENT AUDITS.**

8.1. **Subrecipient Financial Statements.** For each fiscal year that Subrecipient receives CDBG Funds, Subrecipient shall have audited financial statements prepared by an independent certified public accountant, in accordance with GAAP and Generally Accepted Government Audit Standards [GAGAS]. Subrecipient shall provide City a copy of Subrecipient’s audited financial statements within nine (9) months after the end of Subrecipient’s fiscal year. Extensions of up to thirty (30) calendar days may be granted by City, in City’s sole and absolute discretion, upon written request by Subrecipient. Audited financial statements shall include all of the following: (a) a balance sheet, income statement, and cash flow statement showing use of revenues and expenditures for all funds received by Subrecipient; (b) a statement certifying compliance with all terms and conditions of this Agreement, and that all reports and disclosures required from Subrecipient under this Agreement have been completed, signed, and submitted by an authorized and approved officer of Subrecipient.

8.2. **Subrecipient Audit.** If Subrecipient is expending $750,000 or more (or the current Federal threshold) in total Federal funding from all sources in a year, Subrecipient shall have an audit conducted in accordance with 2 C.F.R. Subpart F (sections 200.500 – 200.520) within nine (9) months after the end of Subrecipient’s fiscal year. Subrecipient shall electronically submit a copy of the audit to the Federal Audit Clearinghouse, including the required data collection and reporting package described in 2 C.F.R. section 200.512, within the earlier of thirty (30) calendar days after Subrecipient’s receipt of the audit or nine (9) months after the end of Subrecipient’s fiscal year. Subrecipient must submit a copy of any management letters issued by the auditor for the audit to City within nine (9) months after the end of Subrecipient’s fiscal year.

8.3. **City and Federal Government Access to Audit Information.** Subrecipient shall provide in any agreement Subrecipient enters into with an audit firm that the audit firm shall provide access for City or the Federal government to the working papers of the auditor(s) who prepare(s) the audit(s) for Subrecipient, that Subrecipient waives any claim of privilege or confidentiality regarding, and consents to and authorizes the audit firm to release to City or the Federal government, any and all information obtained and utilized by such audit firm as the basis of any audit report issued by the audit firm and relating to
8.4. Other Audits. If Subrecipient is subject to an audit from a source other than City, Subrecipient shall provide a copy of the audit to City within thirty (30) calendar days after Subrecipient’s receipt of the audit. City, in its sole and absolute discretion, may conduct a review of any such third party audit(s). Subrecipient shall fully cooperate with any such review by City, including providing any and all documentation associated with any such third party audit(s) within fourteen (14) calendar days after Notice from City.

8.5. Adverse Audit Findings. If any type of audit or monitoring review reveals any pattern of suspicious or questionable requests for reimbursement by Subrecipient under this Agreement, City shall have the right, in its sole and absolute discretion, to take remedial action under Section 17. If an independent audit identifies any concerns about Subrecipient’s accounting practices or internal controls that results in an independent auditor’s opinion other than an unqualified opinion, City shall have the right to suspend or terminate this Agreement, effective immediately upon Notice to Subrecipient. On any such termination, City shall have the right to reprogram any and all unexpended CDBG Funds allocated to the Budget under this Agreement.

8.6. Subrecipient Cooperation. Subrecipient shall fully cooperate with City and any other auditors in any review or investigation of Subrecipient’s conduct or action(s) relating to this Agreement. Failure by Subrecipient to so cooperate shall be a material breach of this Agreement.

9. RECORDS.

9.1. Maintenance, Inspection and Photocopying. Subrecipient and its Subcontractors shall maintain all Records during the Term and the Retention Period (defined in Section 9.3). At any time during normal business hours and as often as requested, Subrecipient and its Subcontractors shall permit City, HUD, the Comptroller General of the United States [Comptroller General], or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Subrecipient), all Records for the purposes of making audits, examinations, excerpts, or transcriptions, or monitoring and evaluating Subrecipient’s performance of its obligations under this Agreement. Upon any request by City, HUD, Comptroller General, or any of their duly authorized representatives, for any Records, Subrecipient and its Subcontractors shall submit exact duplicates of the originals of the requested Records to the requesting party for the purposes described in this Section 9.1. City, HUD, and Comptroller General may retain copies of the Records, if such retention is deemed necessary by City, HUD, or Comptroller General, in their respective sole and absolute discretion. If Subrecipient or a Subcontractor is unable to make any Records available for inspection within the County of San Diego, then Subrecipient shall pay all of City’s travel-related costs to inspect and photocopy the Records at the location where the Records are maintained. Any refusal by Subrecipient or a Subcontractor to fully comply with the provisions of this Section 9.1 shall be a material breach of this Agreement.

9.2. Ownership of Original Records. Once Subrecipient has received any reimbursement from City under this Agreement, all Records shall be the property of City. City’s ownership of the Records includes the use, reproduction, or reuse of the Records, and all incidental rights, whether or not the work for which the Records were prepared has been performed. No Records shall be shown to any other public or private person or entity, except as
authorized by City in writing, or where such Records are subject disclosure pursuant to the California Public Records Act, as determined by the City Attorney. Subrecipient shall retain originals of all Records for the Retention Period specified in Section 9.3.

9.3. Records Retention Period. Subrecipient and its Subcontractors shall retain all Records for at least three (3) years after the later of [Retention Period]: (a) Subrecipient’s submission of all required reports under this Agreement; or (b) City and Subrecipient make all final payments and resolve all pending matters (including audit findings) under this Agreement. All Records shall be kept at Subrecipient’s (or relevant Subcontractor’s) regular place of business. At any time during the Retention Period, Subrecipient and its Subcontractors shall permit City, HUD, Comptroller General, or any of their duly authorized representatives, to inspect and photocopy any and all Records for the purposes described in Section 9.1. After expiration of the Retention Period, Subrecipient and its Subcontractors, shall provide City with thirty (30) calendar days’ advance Notice of their respective intent to dispose of any Records. During this thirty (30) calendar day time period, Subrecipient and its Subcontractors shall provide any and all Records to City upon Notice from City.

10. GRANT CLOSEOUT. City will close out the grant provided under this Agreement to Subrecipient for the Activity when: (1) all Activity or other costs to be paid with CDBG Funds pursuant to the terms of this Agreement have been expended and drawn down by the Subrecipient, with the exception of closeout costs (e.g., audit costs); (2) the Activity for which CDBG Funds were expended is physically completed, eligible for use of CDBG Funds, has met a national objective under Title 24 C.F.R. section 570.208, and Subrecipient has reported on all accomplishments resulting from the Activity; (3) all audits and reports to be provided by Subrecipient under this Agreement have been properly completed and delivered to City; and (4) all other responsibilities of Subrecipient under this Agreement and applicable laws and regulations have been satisfactorily performed or there is no further City interest in keeping this Agreement open for the purpose of securing such performance. When all of the conditions to grant close out set forth in the immediately preceding sentence are satisfied, City will Notify Subrecipient that the grant has been closed out [Closeout Notice].

11. COMPLIANCE WITH LAWS AND POLICIES. Subrecipient and its Subcontractors shall comply with all applicable laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, and policies of the Federal, State, City and other government, as they pertain to this Agreement or the Activity. In addition, Subrecipient and its Subcontractors shall immediately comply with all directives issued by City, or its duly authorized representatives, under authority of any law, statute, rule, regulation, order, ordinance, resolution, permit, requirement, or policy of Federal, State, City or other government. Failure by Subrecipient or any Subcontractor to accept or comply with the provisions of this Section 11 shall be a material breach of this Agreement.

12. CONFLICT OF INTEREST. Subrecipient and its Subcontractors shall comply with all Federal, State, and City conflict of interest laws, regulations, and policies applicable to this Agreement, including the applicable provisions of each of the following: (a) the conflict of interest provisions in 24 C.F.R. section 570.611 and 2 C.F.R. section 200.318; (b) California Government Code sections 1090 - 1099 and sections 81000 - 91014; (c) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations); and (d) the “Conflict of Interest and Procurement Policy for Non-profit Corporations Contracting with City of San Diego” attached to this Agreement as Exhibit B.
12.1. Public Officer or Employee Economic Interests. The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If Subrecipient becomes aware during the Term of any financial or economic interest of any public officer or employee of City relating to this Agreement, Subrecipient shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to immediately terminate this Agreement by giving Notice of termination to Subrecipient.

12.2. Statements of Economic Interests. The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If Subrecipient becomes aware during the Term of any financial or economic interest of any public officer or employee of City relating to this Agreement, Subrecipient shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to immediately terminate this Agreement by giving Notice of termination to Subrecipient. City may take any other action for a breach or default under this Agreement, including remedies set forth in Section 17.

12.3. City Conflict of Interest Code Restrictions. If City requires any employee or representative of Subrecipient to file a Form 700, that person shall be considered a “City Official,” subject to the provisions of City’s Ethics Ordinance (SDMC sections 27.3501-27.3595), including the prohibition against lobbying City for one (1) year following the expiration or termination of this Agreement. Subrecipient shall establish, and make known to its employees and representatives, appropriate safeguards to prohibit them from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Subrecipient’s personnel employed in performing Subrecipient’s obligations under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Subrecipient shall not recommend or specify any product, supplier, or contractor with whom Subrecipient or any of its employees or representatives has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. If Subrecipient or any of its employees or representatives violates any conflict of interest law, or any of the provisions of this Section12, the violation shall be a material breach of this Agreement. Further, any such violation shall subject Subrecipient to liability to City for attorney’s fees and all damages sustained as a result of the violation.

13. EMPLOYMENT OF CITY STAFF. Pursuant to City Council Policy 300-11, if Subrecipient employs an individual, who, within twelve (12) months immediately preceding such employment, did, in the individual’s capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to City Council in connection with the selection of Subrecipient for the award of CDBG Funds, City, at its sole discretion, shall have the right to unilaterally and immediately terminate this Agreement by Notice to Subrecipient.

14. CITY MUNICIPAL CODE AND POLICY COMPLIANCE.

14.1. Non-Discrimination in Contracting. Subrecipient and each Subcontractor shall comply with City’s Nondiscrimination in Contracting Ordinance, codified in SDMC sections 22.3501 – 22.3517. Subrecipient shall not discriminate, and shall require its
Subcontractors not to discriminate, on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, familial status, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, or any subcontractors, vendors, or suppliers. Within sixty (60) calendar days after a request by City, Subrecipient shall provide City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Subrecipient has used in the past five years on any of its contracts that were undertaken within the County of San Diego, including the total dollar amount paid by Subrecipient for each subcontract or supply contract. Subrecipient shall fully cooperate in any investigation conducted by City pursuant to City’s Nondiscrimination in Contracting Ordinance. Subrecipient’s violation of any provision of this Section14.1shall be a material breach of this Agreement.

14.2. Local Business and Employment. Subrecipient acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Subrecipient shall, to the extent reasonably possible and allowed by law, solicit applications for employment and bids and proposals for subcontracts for work associated with the Activity, from local residents and firms, as opportunities occur. Subrecipient shall hire qualified local residents and firms, whenever feasible and allowed by law.

14.3. Living Wage Ordinance. As applicable, Subrecipient shall comply with the City’s Living Wage Ordinance, codified in SDMC sections 22.4201-22.4245, in performing any Work under this Agreement.

14.4. Americans with Disabilities Act. Subrecipient and each Subcontractor shall comply with City Council Policy 100-04, relating to the Federally mandated Americans with Disabilities Act [ADA], and incorporated into this Agreement by this reference. Subrecipient and each Subcontractor shall be individually responsible for their own ADA compliance program.

14.5. Drug-Free Workplace. Subrecipient and each Subcontractor shall comply with City’s Drug-Free Workplace requirements set forth in City Council Policy 100-17. Subrecipient and each Subcontractor shall certify that each of them will provide a drug-free workplace. Such certification shall be in electronic form reasonably required by City and signed by an authorized representative of Subrecipient or the applicable Subcontractor, respectively. Delivery of this certification by Subrecipient shall be a condition precedent to this Agreement. Subrecipient and each Subcontractor shall post in a prominent place at the Site a statement setting forth its drug-free workplace policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violating the policy. Subrecipient and each Subcontractor shall establish a drug-free awareness program to inform employees about each of the following: (a) the dangers of drug abuse in the workplace; (b) the policy of maintaining a drug-free workplace; (c) the availability of drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations. Subrecipient shall ensure that all subcontracts in connection with this Agreement contain language requiring the Subcontractor to comply with the provisions of this Section14.5, as required by City Council Policy 100-17. Subrecipient shall not allow any Subcontractor to perform any labor or services regarding the Activity, unless and until such Subcontractor delivers the certification required by this Section14.5to City. Subrecipient and its Subcontractors shall be individually responsible for their own drug-free workplace program.
14.6. **Storm Water Pollution Prevention.** As applicable, Subrecipient and each Subcontractor shall comply with City’s Storm Water Management and Discharge Control Ordinance, codified in SDMC sections 43.0301-430312, in performance of this Agreement.

14.7. **Product Endorsement.** Subrecipient shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements or creating any advertisement or writing that identifies or refers to City as the user of a product or service, without obtaining the prior written approval of City, in City’s sole and absolute discretion.

14.8. **Equal Benefits Ordinance.** In accordance with City’s Equal Benefits Ordinance, codified in SDMC sections 22.4301-22.4308 [EBO], Subrecipient and each Subcontractor shall provide and maintain equal benefits, as defined in SDMC section 22.4302, throughout the Term. Subrecipient’s or any Subcontractor’s failure to maintain equal benefits consistent with the EBO is a material breach of this Agreement (SDMC section 22.4304(e)). Subrecipient and each Subcontractor shall notify their respective employees of the equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by their respective employees:

“During the performance of a contract with City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.”

14.8.1. Subrecipient and each Subcontractor shall immediately give City access to documents and records sufficient for City to verify that Subrecipient and each Subcontractor are providing equal benefits and otherwise complying with the EBO requirements. The full text of the EBO and the “Rules Implementing the Equal Benefits Ordinance” are posted on City’s website at www.sandiego.gov/purchasing/ or can be requested from City’s Equal Benefits Program Office at (619) 533-3948.

14.9. **Business Tax Certificate.** In accordance with SDMC section 31.0301, Subrecipient shall obtain a Business Tax Certificate from City or submit an IRS letter of non-profit status to City before the Effective Date. Subrecipient shall also submit its Taxpayer Identification number (form W-9) to City prior to entering into this Agreement.

14.10. **Operating Manual.** Subrecipient acknowledges receipt of and Subrecipient and each Subcontractor shall comply with the Operating Manual. Any desired changes to the procedures set forth in the Operating Manual must be requested by Subrecipient in writing and approved by City in writing, in City’s sole and absolute discretion, before such changes may be implemented.

15. **IMPROVEMENTS.** If the Activity includes any Improvements all of the provisions of Exhibit E to this Agreement apply to this Agreement and the Activity.

16. **COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND REQUIREMENTS.**

16.2. General Federal CDBG Program Requirements. Subrecipient and each Subcontractor shall comply with all Federal laws and regulations described in 24 C.F.R. section 570, including subpart K (sections 570.600-570.614), except that: (a) Subrecipient does not assume City’s environmental responsibilities described at 24 C.F.R. section 570.604; and (b) Subrecipient does not assume City’s responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.

16.3. Lobbying and Political Activities. Subrecipient and each Subcontractor shall not use any of the CDBG Funds received pursuant to this Agreement to pay any person for influencing or attempting to influence any decision or election by any electorate, legislative body, government agency, grantee, bureau, board, commission, district, or any other instrument of Federal, State, City or other government. The phrase “influencing or attempting to influence” means making, with the intent to influence, any communication to, or appearance before, a board, body, officer, or employee of a governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election. Subrecipient and each Subcontractor shall comply with 31 USC section 1352 and 24 C.F.R. Part 87. Subrecipient shall electronically complete, sign, and submit to City the certification set forth in 24 C.F.R. Part 87, Appendix A, prior to entering into this Agreement and as a condition precedent to this Agreement. Subrecipient shall also require this same certification to be included in all subcontracts, sub-grants, and cooperative agreements relating to the Activity. Additionally, Subrecipient shall disclose to City any funds from any other source paid by Subrecipient (or its principals or agents) to any person or entity, within the last year, for influencing or attempting to influence decisions of the Federal government, by electronically completing, signing, and submitting to City, Standard Form LLL, “Disclosure of Lobbying Activities,” found at 24 C.F.R. Part 87, Appendix B. Subrecipient understands that the duty to disclose lobbying activities is a continuing requirement and Subrecipient agrees to make such disclosures at the end of each calendar quarter during the Term in which any activity requiring disclosure occurs or more often, if required by applicable law.

16.4. Recognition of Funding Source. Subrecipient and each Subcontractor shall recognize the role of City’s CDBG Funds in financing the Activity under this Agreement. All activities performed, facilities and items utilized, and publications prepared, in connection with this Agreement or the Activity shall be prominently labeled to reference the use of City CDBG Funds from HUD as a funding source, as follows: “This Activity is funded in whole or in part with Community Development Block Grant Program funds provided by the U.S. Department of Housing and Urban Development to the City of San Diego.”

16.5. Playing by the Rules Handbook. Subrecipient and each Subcontractor shall certify that each has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth in such handbook.

16.6. No Discrimination. Subrecipient and each Subcontractor shall comply with Title VI of the Civil Rights Act of 1964 and the implementing regulations in 24 C.F.R. Part 1, Executive Order 11063, as amended by Executive Order 12259, and the implementing regulations in 24 C.F.R. Part 107, the California Fair Employment Practices Act, and any other applicable Federal or State laws or regulations prohibiting discrimination on any basis, enacted before or after the Effective Date. Subrecipient and each Subcontractor shall not discriminate on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing this Agreement, including in
employment opportunities, the provision of labor, services, privileges, facilities, advantages, or accommodations. Subrecipient’s or any Subcontractor’s failure to comply with the requirements of this Section 16.6 shall be a material breach of this Agreement and, in addition to all other rights or remedies of City regarding such breach, City shall have the right to: (a) withhold reimbursement payments under this Agreement until Subrecipient or the applicable Subcontractor complies with the requirements of this Section 16.6; (b) terminate this Agreement; (c) debar Subrecipient or the applicable Subcontractor; or (d) impose other sanctions on Subrecipient or the applicable Subcontractor, including suspension from participating in future City contracts (as a grantee, Subrecipient, or subcontractor). Failure to satisfy sanctions imposed by City pursuant to this Section 16.6 shall prohibit Subrecipient or the applicable Subcontractor from participating in future City contracts, until all sanctions have been satisfied. Nothing in this Section 16.6 shall be interpreted to hold Subrecipient liable for any discriminatory practice of its Subcontractors.

16.7. **Contract Work Hours and Safety Standards Act.** Subrecipient and each Subcontractor shall comply with 40 USC sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor regulations at 29 C.F.R. Part 5.

16.8. **Copeland “Anti-Kickback” Act.** Subrecipient and each Subcontractor shall comply with the Copeland “Anti-Kickback” Act (18 USC section 874), as supplemented by the Department of Labor regulations at 29 C.F.R. part 3.


16.10. **Clean Air Act and Federal Water Pollution Control Act.** Subrecipient and each Subcontractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC sections 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC sections 1251-1387), for contracts in excess of $150,000.

16.11. **Religious Activities.** Subrecipient and each Subcontractor shall comply with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including 24 C.F.R. section 570.200(j), referring to 24 C.F.R. section 5.109, and Executive Order 11245, as amended by Executive Order 13279.

16.12. **Section 3 Clause.** If applicable under 24 C.F.R. section 135.3, then pursuant to 24 C.F.R. section 135.38, Subrecipient (and, if indicated below, City) shall comply with the following “Section 3 Clause”:

A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC section 1701u [Section 3]. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted activities covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
B. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. Subrecipient agrees to send to each labor organization or representative of workers with which Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Subrecipient's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.

D. Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with the regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. Subrecipient will not subcontract with any subcontractor where Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after Subrecipient is selected, but before this Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent Subrecipient's obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted agreements.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act [25 USC section 450e] also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

16.12.1. Subrecipient shall document its good faith efforts to comply with the terms and conditions of the above Section 3 Clause and furnish such documentation to City, upon request.
16.13. Reversion of Assets. Upon the expiration or termination of this Agreement, Subrecipient and each Subcontractor shall transfer to City any CDBG Funds or Program Income held by Subrecipient or such Subcontractor, respectively, and assign to City any accounts receivable attributable to the use of CDBG Funds or Program Income by Subrecipient or such Subcontractor, respectively. Subrecipient shall comply with the requirements of 24 C.F.R. section 570.503(b)(7) regarding the use or disposition of any real property acquired or improved with CDBG Funds in excess of $25,000. In addition to any other remedies available to City under this Agreement or otherwise, if Subrecipient does not use the real property to meet one of the national objectives in 24 C.F.R. section 570.208 for at least five (5) years after the date of the Closeout Notice, Subrecipient shall pay City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of funds other than CDBG Funds or Program Income for the acquisition of, or improvement to, the property, which payment shall be Program Income to City.

16.14. Fair Housing Act. As applicable, Subrecipient and each Subcontractor shall comply with Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), age or disability. Subrecipient shall post in a prominent place at the Site the Equal Housing Opportunity Logo provided by City, which may be obtained through the City’s Economic Development Department. Subrecipient shall also post in a prominent place at the Site any other Fair Housing materials provided by City during the Term. Subrecipient shall attend the City’s annual mandatory fair housing workshop for CDBG Subrecipients.

16.15. Section 504. Subrecipient and each Subcontractor shall comply with any and all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against persons with disabilities in any Federally assisted program. City shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations applicable during the Term of this Agreement.

16.16. Limited English Proficiency. As applicable, Subrecipient and each Subcontractor shall comply with Executive Order 12166, enacted on August 11, 2000, mandating that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency (LEP) persons. Subrecipient and each Subcontractor shall comply with and make good faith and reasonable efforts to carry out the purposes of Executive Order 12166 relating to “Improving Access to Services by Persons with Limited English Proficiency.” Subrecipient acknowledges that failure to ensure LEP access to HUD benefits may violate Title VI of the Civil Rights Act of 1964.

16.17. Lead-Based Paint. Subrecipient and each Subcontractor shall comply with 24 C.F.R. section 570.608 relating to the Lead-Based Paint Poisoning Prevention Act (42 USC sections 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC sections 4851-4856), and implementing regulations at Part 35, subparts A, B, J, K, and R.

17. REMEDIES FOR DEFAULT. Notwithstanding any provision of this Agreement to the contrary, if Subrecipient or any Subcontractor fails to comply with any term or condition of this Agreement, City may exercise any or all of the following remedies: (a) suspending one or more
payments to Subrecipient, until Subrecipient and each Subcontractor is in compliance with this Agreement; (b) not reimbursing Subrecipient for all or part of the cost of the Activity or action not in compliance with this Agreement; (c) wholly or partly suspending the award of CDBG Funds to Subrecipient under this Agreement; (d) terminating the award of CDBG Funds to Subrecipient under this Agreement; (e) terminating this Agreement in accordance with Section18; (f) those remedies set forth in 24 C.F.R. section 570.910, pursuant to 24 C.F.R. section 570.501(b); (g) deeming Subrecipient ineligible from consideration for any future CDBG funding from City; (h) any other remedy specified in this Agreement; or (i) any remedy available at law or in equity. If City notifies Subrecipient that City has suspended payments or disallowed funds, or that City has partly suspended the award of CDBG Funds to Subrecipient under this Agreement, Subrecipient shall not expend any CDBG Funds related to, or connected with, any area of controversy or conflict that resulted in the suspension, disallowance, or partial suspension of funding. If City wholly suspends or terminates the award of CDBG Funds to Subrecipient under this Agreement, Subrecipient shall cease expending CDBG Funds in connection with the Activity. The rights and remedies of City under this Agreement are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or prevent City's exercise of other rights or remedies under this Agreement, at law or in equity, that may be available to City.

18. TERMINATION

18.1. Convenience. Notwithstanding the Term of this Agreement or any provision of this Agreement to the contrary, in accordance with 24 C.F.R. section 85.44, City or Subrecipient may terminate this Agreement for any reason, at any time, upon thirty (30) calendar days’ Notice of termination to the other Party.

18.2. Curable Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may terminate this Agreement upon fifteen (15) calendar days’ Notice to Subrecipient, if Subrecipient fails to comply with (i.e., defaults on) any term or condition of this Agreement. The Notice shall include a description of Subrecipient’s default. If Subrecipient fails to cure the default within fifteen (15) calendar days after the date Subrecipient receives the Notice, City may immediately terminate this Agreement. City reserves the right to suspend payments to Subrecipient during the fifteen (15) calendar day Notice period.

18.3. Incurable Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement upon Notice to Subrecipient if:

18.3.1. Subrecipient makes a material misrepresentation to City in Subrecipient’s CDBG funding application or otherwise relating to this Agreement, regardless of whether Subrecipient had knowledge or intent with respect to the misrepresentation;

18.3.2. Subrecipient violates any term or condition of this Agreement for which immediate termination is authorized;

18.3.3. Subrecipient, or any of its officers or directors, becomes subject to any court action or proceeding relating to the performance of Subrecipient’s obligations under this Agreement that materially and adversely affects Subrecipient’s performance of its obligations under this Agreement;

18.3.4. Subrecipient misappropriates any funds under this Agreement;
18.3.5. Subrecipient files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;

18.3.6. Any or all of the CDBG Funds allocated to City by HUD (not just funds awarded under this Agreement) are suspended, terminated, delayed or recovered by the Federal government; or

18.3.7. Subrecipient is unable or unwilling to comply with any additional terms or conditions governing the Activity or this Agreement that may be required by newly enacted (or amended) Federal, State, City or other laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, policies, or directives.

18.4. **Effect of Termination.** City’s termination of this Agreement shall terminate each and every right of Subrecipient, and any person claiming any rights by or through Subrecipient, under this Agreement, except Subrecipient’s right to fair and reasonable compensation under Section 19.

19. **SUBRECIPIENT RESPONSIBILITIES ON EXPIRATION OR TERMINATION OF THIS AGREEMENT.** If this Agreement expires or is terminated, Subrecipient shall complete any and all additional work necessary for the orderly filing of documents and closing of Subrecipient’s performance of its obligations under this Agreement. Subrecipient shall be entitled to fair and reasonable compensation for work performed on the Activity by Subrecipient before the effective date of expiration or termination of this Agreement, subject to the Budget. By accepting payment for completion of performance of its obligations under this Agreement, Subrecipient discharges City of all of City’s obligations and liabilities under this Agreement.

20. **INFORMAL DISPUTE RESOLUTION.** If City and Subrecipient have any dispute as to their respective rights, obligations, or duties under this Agreement, or the meaning or interpretation of any provision contained in this Agreement, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five (5) calendar days of determining the existence of any such dispute, the Party determining there is such a dispute shall give Notice to the other Party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five (5) calendar days of the second Party’s receipt of such Notice, or at such time thereafter as is reasonable under the circumstances.

21. **MANDATORY ASSISTANCE.** If a third party dispute or litigation, or both, to which City is a party, arises out of, or relates in any way to, this Agreement, and Subrecipient’s obligations under Section 22 do not apply to such dispute or litigation, then upon City’s request, Subrecipient, its agents, officers, and employees shall fully assist City in resolving the dispute or litigation. Subrecipient’s assistance to City, referred to as “Mandatory Assistance,” includes providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute or litigation. In providing City with Mandatory Assistance, if Subrecipient, its agents, officers, or employees incur costs (excluding attorney’s fees), subject to Section 22, City will compensate Subrecipient for such costs. However, if it is determined through resolution of the third party dispute or litigation, or both, that such third party dispute or litigation was attributable, in whole or in part, to one or more acts or omissions of Subrecipient, its agents, officers, or employees, Subrecipient shall fully reimburse City for all funds paid to Subrecipient, its agents, officers, or employees relating to Mandatory Assistance. Any attorney’s...
fees Subrecipient may incur as a result of providing Mandatory Assistance are not reimbursable from City.

22. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT. Subrecipient shall defend, indemnify, protect, and hold harmless City, its elected officials, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including injury to Subrecipient’s officers, employees, invitees, guests, agents, or Subcontractors, that arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by one or more acts or omissions of Subrecipient, its officers, employees, representatives, agents, or Subcontractors in performing this Agreement, and all expenses of investigating and defending against same, including attorney’s fees and costs. However, Subrecipient’s duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, officers, employees, representatives, or agents. City may, in its sole and absolute discretion, conduct its own defense, or participate in its own defense, of any claim subject to this indemnification provision. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in its defense of any claim subject to this indemnification provision, Subrecipient shall pay City for all costs related thereto, including attorney’s fees and costs. Subrecipient shall pay City any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Section22. The provisions of this Section22are not limited by the insurance requirements of Section6.

23. SUBCONTRACTS AND SUBCONTRACTOR LIST. Subrecipient shall provide to City a copy of all subcontracts Subrecipient has entered into (or intends to enter into contingent upon entering into this Agreement) in connection with the Activity, along with a written statement describing the justification for the subcontract and an itemization of all costs for the subcontract. Subrecipient shall procure all subcontracts in conformance with the procedures set forth in Exhibit B. Subrecipient shall maintain documentation of the process used to procure all subcontracts and shall provide a copy of all such documentation to City, within ten (10) calendar days after Notice from City requesting such documentation. Within ten (10) calendar days after Notice from City requesting a list of Subrecipient’s Sub-Contractors, Subrecipient shall also provide City with a complete list of Subrecipient’s Subcontractors, listing the names and contact information of all Subcontractors Subrecipient has hired or retained, or intends to hire or retain, in connection with the Activity. Subrecipient shall monitor all subcontracts on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance and shall be made available to City during monitoring reviews or within ten (10) calendar days after Notice from City requesting such reports and evidence. Subrecipient shall comply with 2 C.F.R. section 200.321, as applicable, regarding affirmative efforts to contract with minority businesses, women’s business enterprises, and labor surplus area firms. Subrecipient shall provide City, at the time of Activity completion, a report on the minority business or women’s business enterprise status of all Subcontractors with contracts of $10,000 or greater. If, during the Term, Subrecipient identifies a need for one or more additional subcontracts, Subrecipient shall, within ten (10) calendar days after the date of any such subcontract, provide a copy of the subcontract to City, along with a written statement describing the justification for the additional subcontract, an itemization of all costs for the additional subcontract, and an updated list of Subcontractors.

23.1. Required Subcontract Language. Subrecipient shall ensure that all subcontracts entered into in connection with the Activity contain the provisions set forth in
Sections 8 through 16 and Section 27 of this Agreement.

**23.2. Contract Activity Report.** Within ten (10) calendar days after Notice from City requesting such information, Subrecipient shall provide City: (a) statistical information (as described in City’s then current form of Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and (b) an invoice from each Subcontractor listed in the Contract Activity Report.

**23.3. Prohibition on Use of Certain Subcontractors.** Subrecipient shall not employ, award any contract to, engage the services of, or fund any Subcontractor, during any period when Subrecipient has notice (actual, constructive, or implied) of such Subcontractor’s Federal, State, City or other debarment, suspension, or ineligibility. Subrecipient shall electronically certify to City that Subrecipient is in compliance with this Section 23.3. A contract award must not be made to any person or entity listed on the Federal government wide Excluded Parties List System in the Federal System Award Management, in accordance with 2 C.F.R. Part 180.

**24. NOTICE.** In all cases where Notice is required under this Agreement, delivery of such Notice shall be effective on the date transmitted by e-mail, on the third business day after the Notice is deposited with the United States Postal Service, or on the first business day after deposit with a nationally recognized overnight delivery service for next business day delivery, in each of the latter two cases with postage or delivery costs paid and addressed to City as specified below in this Section 24 or to Subrecipient at Subrecipient’s address set forth on the Cover Page to this Agreement. City or Subrecipient may change its Notice address by Notice delivered in accordance with this Section 24. Notice delivered by personal service shall be effective on delivery. As of the Effective Date, the Notice address for the City is: City of San Diego, Economic Development Department, Attn: Community Development Division Program Manager, 1200 Third Avenue, Suite 1400, San Diego, CA 92071; Email address: CDBG@sandiego.gov.

**25. CITY REPRESENTATIVE.** City’s Economic Development Department is the City’s administrator for this Agreement. The Community Development Division Program Manager in City’s Economic Development Department is the “City Representative” for all purposes of this Agreement. The City Representative shall communicate with Subrecipient on all matters related to the administration of this Agreement and Subrecipient’s performance of its obligations under this Agreement. When this Agreement refers to communications to or with City, those communications shall be with the City Representative, unless this Agreement or the City Representative specifies otherwise. When this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his or her designee, unless this Agreement specifies otherwise. City, in its sole and absolute discretion, may change the identity of the City Representative at any time by Notice to Subrecipient.

**26. SUBRECIPIENT REPRESENTATIVE.** The “Subrecipient’s Primary Representative” identified in City’s ED Grants System is the “Subrecipient Representative” who shall act and receive Notices on behalf of Subrecipient for all purposes of this Agreement. Subrecipient may change the identity of the Subrecipient Representative by Notice to City at least ten (10) calendar days before the date of such change. City may communicate with the Subrecipient Representative on all matters relating to this Agreement.

**27. INDEPENDENT CONTRACTOR.** Subrecipient acknowledges, and shall require its Subcontractors to acknowledge, that Subrecipient and its Subcontractors are independent
contractors, and not agents or employees of City. Any provision of this Agreement that may appear to give City a right to direct Subrecipient concerning the details of performing its obligations under this Agreement, or to exercise any control over such performance, shall mean only that Subrecipient shall follow the direction of City concerning the end results of the performance. Subrecipient shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind, on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

28. NO ASSIGNMENT. Because this Agreement is entered into by City in reliance upon Subrecipient’s qualifications, experience, and personnel, Subrecipient shall not assign or subcontract any of its rights, obligations, or duties under this Agreement, without obtaining the prior written consent of City, which may be given, withheld or conditioned in City’s sole and absolute discretion. Any assignment of Subrecipient’s rights, obligations, or duties under this Agreement without the prior written consent of City shall not create a contractual relationship between City and the asserted assignee, and any such assignment shall be ineffective, null and void. Any assignment in violation of this Section28is grounds for immediate termination of this Agreement by City, in City’s sole and absolute discretion.

29. CONFIDENTIALITY OF INFORMATION. All information provided by City to Subrecipient in connection with this Agreement is for the sole use of Subrecipient. Subrecipient shall not release any of this information to any third party, without the prior written consent of City, which consent may be given, withheld, or conditioned in City’s sole and absolute discretion. City consent is not required for release of information that: (a) was publicly known, or otherwise known to Subrecipient, at the time the information was provided to Subrecipient by City; (b) subsequently becomes publicly known, through no act or omission of Subrecipient; (c) becomes known to Subrecipient from a source or means other than City; or (d) is considered a “public record,” pursuant to the California Public Records Act (California Government Code sections 6250 – 6276.48).

30. INTELLECTUAL PROPERTY. All rights to discoveries or inventions that arise or are developed in the course of performance of this Agreement shall be the property of City and may be disposed of in accordance with City policy. City, in its sole and absolute discretion, may file for patents in connection with all rights to any such discoveries or inventions. Subrecipient acknowledges that all Intellectual Property shall constitute a “work for hire,” as that term is defined in the Copyright Act of 1976, as amended. Accordingly, all right, title, and interest in and to all Intellectual Property shall be the exclusive property of City, including all copyrights and other intellectual property rights in any and all Intellectual Property. If for any reason any Intellectual Property is not deemed to be a “work for hire,” Subrecipient grants, transfers, sells, and assigns, exclusively to City, all right, title, and interest in and to said Intellectual Property, including all copyrights and other intellectual property rights in such Intellectual Property. Subrecipient shall execute and deliver to City a confirming grant and assignment of all rights in and to all Intellectual Property, and shall execute any other document City deems necessary to ensure the complete and effective transfer of all right, title, and interest in and to such Intellectual Property to City. Subrecipient shall deliver all Intellectual Property to City within fifteen (15) calendar days after the expiration or termination of this Agreement. If Subrecipient fails to deliver all Intellectual Property to City and City desires to use such Intellectual Property, Subrecipient shall provide City with equivalent materials, at Subrecipient’s expense, or reimburse City, in full, for the cost of developing equivalent materials. Subrecipient represents and warrants that any materials or deliverables, including all Intellectual Property, provided under this Agreement are original, not encumbered, and do not infringe upon the copyright,
trademark, patent, or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials, or Intellectual Property provided under this Agreement become the subject of a claim, suit, or allegation of copyright, trademark, or patent infringement, City shall have the right, in City’s sole and absolute discretion, to require Subrecipient to produce, at Subrecipient's own expense, new non-infringing materials, deliverables, or Intellectual Property as a means of remedying any claim of infringement, in addition to any other remedy available to City at law or in equity. Subrecipient shall indemnify and hold harmless City, its elected officials, officers, employees, representatives, and agents from and against any and all claims, actions, costs, judgments, or damages of any type, alleging or threatening that any materials, deliverables, supplies, equipment, services, or Intellectual Property provided under this Agreement infringe the copyright, trademark, patent, or other intellectual property or proprietary rights of any third party [Third Party Infringement Claim]. If a Third Party Infringement Claim is threatened or made before Subrecipient receives payment under this Agreement, City shall be entitled, upon Notice to Subrecipient, to withhold some or all of any future payments becoming due to Subrecipient under this Agreement.

31. MISCELLANEOUS PROVISIONS.

31.1. Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State.

31.2. Governing Law. The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State. In addition, the terms and conditions of this Agreement are subject to HUD rules or regulations in effect on or after the Effective Date. Any newly adopted government rules or regulations or changes to existing government rules or regulations shall become effective for the administration of this Agreement upon receipt by City.

31.3. Jurisdiction and Venue. The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Section20.

31.4. Integration and Amendment. This Agreement, the attached exhibits, and all documents or materials referred to in this Agreement constitute the entire agreement of the Parties concerning the subject matter of this Agreement. All prior negotiations and agreements between the Parties about the subject matter of this Agreement are merged into this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid, unless made in the form of a written amendment to this Agreement signed by the authorized representatives of both Parties. The Parties agree to enter into any and all amendments to this Agreement that are necessary to comply with any and all new or modified Federal or State laws affecting this Agreement. City Council Policy 700-02 requires City Council approval of any amendment to this Agreement that allows Subrecipient to expend or commit CDBG Funds beyond the expiration or earlier termination of the Term.

31.5. No Waiver. No failure of either City or Subrecipient to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach or the requirement to
comply with such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, in this Agreement shall continue in full force and effect regarding any existing or subsequent breach.

31.6. Successors in Interest. This Agreement, and all rights, obligations, or duties under this Agreement, shall be in full force and effect, whether or not any Party to this Agreement has been succeeded by another entity, and all rights, obligations, or duties under this Agreement shall be binding on any Party's successor in interest, subject to the limitations of Section 28.

31.7. Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

31.8. Conflicts between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibit attached to this Agreement, the exhibit shall control. If a conflict exists between an applicable Federal, State, City, or other law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the attached exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall Notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

31.9. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Agreement may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words “include” and “including” in this Agreement shall be construed to be followed by the words: “without limitation.” Each collective noun in this Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this Agreement includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this Agreement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

31.10. Signing Authority. Subrecipient shall provide City with evidence satisfactory to City that Subrecipient’s signatory to this Agreement is authorized to enter into this Agreement on behalf of Subrecipient and that Subrecipient is a valid, qualified corporation or limited liability company in good standing in its home state and, if necessary, qualified to do business in the State.

31.11. Counterparts. This Agreement may be signed in multiple counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had signed
the same Agreement.

31.12. **Headings.** All headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

31.13. **Exhibits Incorporated.** All exhibits, documents, or materials referenced in this Agreement are incorporated into this Agreement by such reference.

31.14. **Compliance with Law.** Subrecipient shall comply with all laws, ordinances, regulations, and policies of the Federal, State, City and other local governments applicable to this Agreement. In addition, Subrecipient shall comply immediately with all directives issued by City or its authorized representatives under authority of this Agreement or any law, statute, ordinance, rule, or regulation.

31.15. **Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, and all continuing obligations set forth in this Agreement, shall survive the expiration or termination of this Agreement.

31.16. **Incorporation of Recitals.** The Recitals preceding this Agreement are true and correct and are incorporated into and made a part of this Agreement.

31.17. **Time of Essence.** Time is of the essence of each provision of this Agreement, unless otherwise specified in this Agreement.

[Remainder of page intentionally left blank.]
### Total Project Funds

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<tr>
<th>#</th>
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<th>City Amount</th>
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<tr>
<td>1</td>
<td>PE: Salary and Wages</td>
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<td>2</td>
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<td>NPE: Supplies-Administration Use</td>
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<td>NPE: Federally Approved Indirect Cost Rate*</td>
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<tr>
<td>15</td>
<td>NPE: Construction/Renovation</td>
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#### Title: Construction/Renovation

Construction includes: site preparation; best management practices; temporary construction fencing; survey/staking; gateway steel plates and lettering; stone masonry; steel fabrication and installation; shade structure steel, concrete base and anchors, and fabrication and installation. Labor is calculated using Davis-Bacon prevailing wages.

<table>
<thead>
<tr>
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<tbody>
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<td>$264,600</td>
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16 NPE: Construction Management (max. 6% of Project Budget) $15,876

#### Title: Construction Management

Third party construction management services are estimated at 6% of the project's total construction costs, and are projected to include, but are not limited to: scheduling, administering subcontracts, prevailing wage monitoring, supervising all onsite construction activities, daily labor logs, project specific safety plans, accounting, monthly billing, site photos, progress reports, project close out and punch list activities.

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17 NPE: Loans $0

18 NPE: Consultant Services $0
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EXHIBIT B
Conflict of Interest and Procurement Policy for Non-Profit Corporations
Contracting with City of San Diego

Purpose

It is important for City and its citizens to have confidence in the integrity of nonprofit corporations which contract with City to administer programs, and which receive funding from or through City.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects.

Board Roster

All nonprofit corporations contracting with City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with City for administration of a Business Improvement District shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to City’s procurement of such goods and services.

When a contract provides for an expenditure greater than $5,000, but equal to or less than $10,000, the Nonprofit Corporation may award the contract but shall seek competitive prices either orally or in writing.

When a contract provides for an expenditure greater than $10,000 but equal to or less than $50,000, the Nonprofit Corporation may award the contract but shall solicit written price quotations from at least five potential sources.

When a contract provides for an expenditure greater than $50,000 but equal to or less than $1,000,000, the Nonprofit Corporation may award the contract only after advertising it for a minimum of one day in City Official Newspaper.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation’s contract with City. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.
EXHIBIT C
Insurance Requirements

1. General Requirements. Sub-Recipient shall not begin any performance under this Agreement until it has: (1) provided City insurance certificates and endorsements evidencing all insurance policies and endorsements described in this Exhibit C; (2) obtained City approval of each insurance company or companies issuing such insurance policies or endorsements; and (3) confirmed that all insurance policies contain the special provisions described in this Exhibit C. Sub-Recipient’s liabilities, including Sub-Recipient’s indemnity obligations under this Agreement, shall not be limited in any way to the insurance coverage described in this Exhibit C. Maintenance of the insurance coverage described in this Exhibit C is a material term of this Agreement and Sub-Recipient’s failure to maintain or renew any such insurance coverage or to provide evidence of renewal or replacement of any such insurance coverage during the Term of this Agreement may be treated by City as material breach of this Agreement by Sub-Recipient.

2. Specific Insurance. Sub-Recipient shall procure and maintain for the duration of this Agreement insurance against claims for injuries to Persons or damages to property that may arise from or in connection with Sub-Recipient’s performance under this Agreement and performance by any agents, representatives, employees or subcontractors of Sub-Recipient. Sub-Recipient shall provide, at a minimum, the following insurance coverage:

2.1. Commercial General Liability. Insurance Services Office Form CG 00 01 covering commercial general liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with liability limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the amount of the required occurrence limit.

2.2. Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Sub-Recipient has no owned autos, Code 8 (hired) and Code 9 (non-owned), with a liability limit no less than $1,000,000 per accident for bodily injury and property damage.

2.3. Workers’ Compensation. Workers’ Compensation Insurance as required by the State, with statutory liability limits, and Employer’s Liability Insurance with a liability limit of no less than $1,000,000 per accident for bodily injury or disease.

2.4. Other Insurance Provisions. The insurance policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

2.4.1. Additional Insured Status. City, its officers, officials, employees, and agents are to be covered as additional insured on the required Commercial General Liability insurance policy with respect to liability arising out of work or operations performed by or on behalf of Sub-Recipient, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Sub-Recipient’s Commercial General Liability insurance policy (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37, if a later edition is used).
2.4.2. *Primary Coverage.* For any claims related to this Agreement, Sub-Recipient’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Sub-Recipient’s insurance and shall not contribute with it.

2.4.3. *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except after thirty (30) calendar days’ Notice of cancellation to City.

2.4.4. *Waiver of Subrogation.* Sub-Recipient grants to City a waiver of any right to subrogation that any insurer of Sub-Recipient may acquire against City by virtue of the payment of any loss under any insurance policy. Sub-Recipient agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this waiver applies regardless of whether or not Sub-Recipient obtains such a waiver of subrogation endorsement from the insurer.

2.5. *Deductibles/Self Insured Retentions.* All deductibles under any insurance policy shall be the sole responsibility of Sub-Recipient and shall be disclosed to City at the time the evidence of the insurance coverage is provided to City. Self-insured retentions under any insurance policy shall be the sole responsibility of Sub-Recipient and must be declared to and approved by City at the time the evidence of the insurance coverage is provided to City. City may require Sub-Recipient to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigation, claim administration, and defense expenses within the deductible or retention. Each insurance policy with a self-insured retention shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

2.6. *Acceptability of Insurers.* Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-VI, unless otherwise approved in writing by City. City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance issued by non-admitted carriers are subject to all of the requirements of this Agreement applicable to insurance policies issued by admitted carrier.

2.7. *Verification of Coverage.* Sub-Recipient shall furnish City with original certificates and amendatory endorsements or copies of all applicable insurance policy language effecting insurance coverage described in this Exhibit C. All insurance certificates and endorsements are to be received and approved by City before any performance commences under this Agreement. Failure to obtain the required insurance documents prior to the beginning performance shall not waive Sub-Recipient’s obligation to provide the required insurance coverage or evidence of such insurance coverage. City reserves the right to require complete, certified copies of all insurance policies, including endorsements, described in this Exhibit C, at any time.

2.8. *Special Risks or Circumstances.* City reserves the right to modify the insurance requirements of this Agreement, including liability limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

2.9. *Additional Insurance.* Sub-Recipient may obtain additional insurance not required by
this Agreement, as long as the City, its officers, officials, employees, and agents are named additional insured under such insurance policies.

2.10. **Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies, including, but not limited to, all endorsements.

2.11. **Subcontractors.** Sub-Recipient shall require and verify that all subcontractors maintain insurance meeting all the insurance requirements of this Agreement. Sub-Recipient shall also ensure that City is an additional insured on insurance required from subcontractors. For commercial general liability insurance coverage, subcontractors shall provide coverage with a form at least as broad as the CG 20 38 04 13 endorsement.
EXHIBIT D
Scope of Work

1. TARGET POPULATION/GEOGRAPHICAL AREA
The project is located in Encanto, five miles east of downtown San Diego, in one of the City of San Diego's most economically challenged and racially/ethnically diverse communities. Specifically, the project will benefit Low and Moderate Income (LMI) residents living within four Encanto neighborhoods in the 92102 and 92114 zip codes. These neighborhoods (and their corresponding census tracts) - Chollas View (census tract 34.04), Emerald Hills (30.01), Lincoln Park (33.04), and Valencia Park (31.11) - come together at the intersection of Euclid Avenue and Market Street. According to American Community Survey (ACS) 2011-2015 5-Year Estimates, the four census tracts are home to 20,928 residents who are: 64.1% Hispanic or Latino, 19.0% African-American, 12.5% Asian, 2.1% Caucasian, 0.7% some other race, and 1.6% multiracial. Residents are 48.6% male and 51.4% female. The population is young, with a median age of 27.6 years, compared to a median age of 34.0 years citywide. The population is 34.7% below age 20; only 11.2% are age 65 or older. More than a quarter of all families (25.6%), and 29.4% of individual residents, had incomes below the federal poverty level (which fails to account for San Diego’s high cost of living) during the last 12 months.

2. PROJECT DESCRIPTION
Chollas Creek Gateways & Improvements will add two community gateways and three permanent shade structures at the 2.6-acre Northwest Village Chollas Creek linear park.

3. PROJECT OUTCOME
Low- to moderate-income residents living in or near Chollas View community will have improved access to a public-accessible park for the purpose of creating suitable living environment.

4. PROJECT ACTIVITIES
Jacobs Center for Neighborhood Innovation (JCNI) will use CDBG funding to construct the Chollas Creek Gateways at the Northwest Village Chollas Creek linear park’s two largest street entrances. The 2.6-acre linear park is located south of Guymon Street - across the street from Horton Elementary School, and north of Market Street - across the street from busy Market Creek Plaza (Food-4-Less grocery store, restaurants, and other amenities) and the Euclid Avenue Transit Center. The location for the first gateway will be at the entrance to the Euclid trailhead, which is at the corner of Euclid Avenue and Guymon Street, directly off of the highly traveled Euclid Avenue corridor. The location for the second gateway will be at the Market Street trailhead, across from busy Market Creek Plaza, the Euclid Avenue Transit Center, and the new Trolley Park Terrace townhomes (this Transit-Oriented Development was completed by JCNI in 2016).

The gateways will be comprised of columns or "cairns" and arches. In the artist’s words, "The columns are like cairns, a traditional way of marking trails by stacking piles of rocks." The cairns that make up the columns of the gateway through which pedestrians enter the park, will be made of cobbles and mortar, with a reinforced concrete core and footing. They will have anti-graffiti coating. Atop the cairns, the arches will be made of steel plating, cut by water jet, that have steel lettering welded on them. The arches will be hot-dip galvanized and the lettering that spells "Chollas Creek" will be painted with high-performance industrial coating. These community gateways will enhance a public space through artistic design and contribute to the "Diamond" district's rebranding as a
vibrant cultural destination. Welcoming residents and visitors to the Diamond's Town Center, the gateways will contribute to the community's sense of identity, as envisioned in the Encanto Neighborhoods Community Plan. While contributing to the creation of a more visually appealing neighborhood destination, the Gateways also serve to draw people into the park, encouraging active healthy recreation in a community that lacks sufficient park and green space. The arches of the gateways represent the Chollas Creek watershed.

The project will also add three permanent shade structures, shading some of the park's existing street furniture (benches), to provide refuge on hot, sunny days to residents who are enjoying the park and the view of the newly restored section of Chollas Creek, or who are taking a break while walking along the park's urban trails. The first shade structure will be over the observation deck. This shade will be a functional feature that provides shade, while also being an attractive community focal point. Another two installations will be over the benches on the east side of the creek next to the Walgreens parking lot. The functional and beautiful shades will enhance the user experience.

A more detailed description of the specific construction activities to be completed shall be approved by the Community Development Division (CDD) after the FY 2018 CDBG Agreement between the City and JCNI is executed and Subrecipient completes the required bidding process. Approved project activities to be paid with CDBG funds shall not be implemented by JCNI prior to issuance of the Notice to Proceed by the CDD Project Manager.

5. Applies to PS/CG/CED Projects

5.1 Subrecipient represents and warrants to City that the Project activities do not and will not include any form of construction, repair or real property rehabilitation work.

5.2 Subrecipient may contract with a third person Subcontractor to perform some of the activities for the Project.

6. Applies to NCIP/HR/SUS Projects
Subrecipient may act as Prime Contractor for the Project or contract with a third person Prime Contractor for the Project.

7. CLOSEOUTS
The Subrecipient’s obligation to the City shall not end until all closeout requirements are completed. Activities during this close-out period shall include, but are not limited to:

7.1 Making final payments;

7.2 Disposing of program assets (including the return of all unused materials, program income balances, and accounts receivable to the City); and

7.3 Determining the custodianship of records.

Notwithstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.
EXHIBIT E
Additional Provisions Applicable to Improvements

1. Definitions.

1.1. Federally Assisted Construction Contract. Any agreement between Subrecipient and another person for Improvements paid for in whole or in part with CDBG Funds or borrowed on the credit of City or the Federal government pursuant to the CDBG program, where Subrecipient participates in the performance of the Improvements, including supervision, inspection, and other onsite functions incidental to the actual Improvements.

1.2. Notice to Proceed. Notice from City to Subrecipient that all conditions precedent to commencement of the Activity under this Agreement have been satisfied or waived.

1.3. Prime Contractor. Any Subcontractor that is acting as a general contractor or prime contractor for Improvements as part of the Activity.

1.4. Real Property Restriction. The document attached to this Agreement as Exhibit F.

2. Improvements Construction. Subrecipient shall construct all Improvements, as described in the Scope of Work, in accordance with the Budget and subject to the terms, conditions and covenants of this Agreement. Subrecipient may act as Prime Contractor for such construction or contract with a third person Prime Contractor for such construction. Subrecipient shall not use, or allow to be used, any donated or volunteered labor to perform any labor or services under this Agreement, except as permitted by Federal law and HUD regulations. Use of donated or volunteered labor or services in performance of any Work shall be promptly reported to City.

3. Compliance Documentation. Subrecipient shall provide City with all Environmental Documents and any other documents required by law or this Agreement for construction of any and all Improvements, within fourteen (14) calendar days after Notice from City, unless otherwise specified in the Notice from City. Subrecipient shall also provide written documentation to the satisfaction of City of Subrecipient’s legal authority to construct all Improvements in accordance with this Agreement.

4. Contractor Selection. Subrecipient shall use competitive bidding and contractor selection procedures consistent with Federal procurement requirements to select each Prime Contractor or Subcontractor that will participate in any construction work that is part of the Activity, if any.

5. Pre-Construction Actions. Subrecipient shall not begin work on any Improvement, unless and until: (a) Subrecipient obtains all required permits and approvals from City and other government entities with jurisdiction over such work on the Site; (b) City approves all final construction plans and specifications for such work on the Site; (c) City reviews and approves all subcontracts proposed by Subrecipient regarding such work on the Site; and (d) Subrecipient holds a pre-construction meeting with the City Representative, any third person Prime Contractor, and all Subcontractors expected to participate in such work [collectively, Pre-Construction Requirements]. Subrecipient shall complete all of the Pre-Construction Requirements and Notify City of such completion. Upon City’s confirmation of Subrecipient’s completion of all of the Pre-Construction Requirements, City shall issue a Notice to Proceed to Subrecipient. Under no circumstances shall Subrecipient or any Subcontractor commence work on any Improvement, until Subrecipient receives Notice to Proceed from City.
6. **Commencement of Construction.** Within forty-five (45) calendar days after the date of City issuance of a Notice to Proceed, Subrecipient shall commence work on the Improvements in accordance with the Scope of Work, the Budget, and the terms, conditions and covenants of this Agreement.

7. **Construction Schedule.** Subrecipient is responsible for ensuring that work on the Improvements proceeds to completion within the Term. Completion of the Improvements shall be evidenced by Subrecipient recording a Notice of Completion in accordance with California Civil Code section 8182 or section 9204, as applicable, and City issuance of a final certificate of occupancy for the Improvements, if applicable, or alternatively, final City inspector sign-off on the Improvements, if a certificate of occupancy is not required for the Improvements. Subrecipient is also responsible for ensuring that written reports are completed on a regular basis, that any Prime Contractor’s and any and all Subcontractors’ requests for progress payments are reviewed before payments are made, and that necessary change orders are prepared and submitted to City for approval, prior to implementation.

8. **Maintenance of Documents.** Subrecipient is responsible for ensuring maintenance of all written guarantees and warranties, instruction books, diagrams, charts, and a maintenance manuals for all Improvements following completion of the Improvements.

9. **Scope of Work Changes.** Should circumstances require and the Parties agree, in their respective sole and absolute discretion, that the Scope of Work should be changed or amended, such change or amendment shall be accomplished only as follows: (a) a change to the Scope of Work that does not affect the total amount to be paid or reimbursed to Subrecipient under this Agreement shall be accomplished by a written “Scope of Work Adjustment” form provided by City that is signed by the authorized representatives of both City and Subrecipient; or (b) a change to the Scope of Work that increases the total amount to be paid or reimbursed to Subrecipient under this Agreement shall be made by a written amendment to this Agreement in accordance with Section 31.4.

10. **Builder’s Risk Insurance.** In accordance with the requirements for insurance coverage in Exhibit C and as additional required coverage when the Activity includes Improvements, Subrecipient shall maintain builder’s risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject Improvements, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Improvements.

11. **City Prevailing Wage Requirements.** Subrecipient and all Subcontractors shall comply with SDMC section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 (State prevailing wage law) for any and all construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and for any and all alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000. Pursuant to San Diego Municipal Code section 22.3019 (PWO), construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000 is subject to the State of California prevailing wage law set forth in California Labor Code section 1720 through 1861 (“Prevailing Wage Law”) and in undertaking any and all such work, Subrecipient and its
Subcontractors shall comply with Prevailing Wage Law, including the requirements set forth in this Exhibit E. This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay “living wage” pursuant to San Diego Municipal Code section 22.4201 through 22.4245 (LWO) and Section 14.3 of this Agreement. If both Prevailing Wage Law and the LWO are applicable to particular work, Subrecipient must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

11.1. Compliance with Prevailing Wage Requirements. Pursuant to Prevailing Wage Law, Subrecipient and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations (DIR), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

11.1.1. Copies of the prevailing rate of per diem wages are on file at City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Subrecipient or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested party upon request. Subrecipient shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.

11.1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the term of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date of the published wage rate and the predetermined wage rate shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the term of this Agreement, such wage rate shall apply to the balance of the term of this Agreement.

11.2. Penalties for Violations. Subrecipient and its Subcontractors shall comply with California Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code section 1720-1861.

11.3. Payroll Records. Subrecipient and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Subrecipient shall, and shall require its Subcontractors to, comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts.
with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Subrecipient and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Subrecipient is responsible for ensuring that its Subcontractors submit certified payroll records to City, the Labor Commissioner and DIR.

11.4. **Apprentices.** Subrecipient and its Subcontractors shall comply with California Labor Code section 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Subrecipient shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code section 1777.5, 1777.6 and 1777.7.

11.5. **Working Hours.** Subrecipient and its Subcontractors shall comply with California Labor Code section 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

11.6. **Required Provisions for Subcontracts.** Subrecipient shall include, at a minimum, a copy of the following provisions in any contract it enters into with a Subcontractor: California Labor Code section 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

11.7. **Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, Subrecipient and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Subrecipient and each of its Subcontractors certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.” Subrecipient shall include this certification by each Subcontractor in each contract with a Subcontractor.

11.8. **Subrecipient and Subcontractor Registration Requirements.** All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work pursuant to California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

11.8.1. A contractor’s inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in a response to a
solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

11.8.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Labor Code section 1725.5.

11.8.3. By entering into this Agreement, Subrecipient is certifying that it has verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.

11.9. **Filing of Form PWC-100.** Subrecipient shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

11.10. **Filing of Notice of Completion.** Subrecipient shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

12. **Federal Davis-Bacon Act Compliance.** Subrecipient and each Subcontractor shall comply with the Federal “Davis-Bacon Act” (40 USC sections 3141-3144 and sections 3146-3148), as supplemented by Department of Labor regulations (29 C.F.R. Part 5), for construction contracts in excess of $2,000. Subrecipient and each Subcontractor shall ensure that all laborers and mechanics performing work relating to the Activity are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Davis-Bacon Act are imposed by State, City or other local law, nothing in this Section 12 is intended to relieve Subrecipient or any Subcontractor of the obligation, if any, to pay the higher wage rate. Subrecipient and each Subcontractor shall submit certified payroll records to City on a weekly basis, including the original statements of compliance.

13. **Federally Assisted Construction Contract Required Clauses.** Federally assisted construction contracts entered into by Subrecipient or any Subcontractor, shall include the following clause:

   During the performance of this contract, the contractor agrees as follows:

   (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment
advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by City’s contracting officer, advising the labor union or workers’ representative of the contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

14. **Real Property Restriction.** In accordance with 24 C.F.R. section 570.505, if the Activity involves the acquisition or improvement of real property with more than $25,000 of CDBG.
Funds, Subrecipient shall make and enter into the Real Property Restriction and authorizes City to record the Real Property Restriction in the official records of the County with respect to the subject real property. Subrecipient represents and warrants to City that Subrecipient has the, right, power, and authority to make and enter into the Real Property Restriction and authorize City to record the Real Property Restriction in the official records of the County with respect to the subject real property.
EXHIBIT F

Real Property Restriction (Form)

[Attached behind this cover page.]
EXEMPT FROM RECORDING FEES PURSUANT TO GOVT. CODE §27383

CITY OF SAN DIEGO
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY

THIS CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY (this “Regulatory Agreement”) is dated as of [TO BE DETERMINED], and is made by and between the CITY OF SAN DIEGO, a California municipal corporation (“City”), and [INSERT NAME, ENTITY FORM, AND STATE OF DOMICILE OF PROPERTY OWNER] (“Owner”), with reference to the following recited facts (each, a “Recital”).

RECATALS

A. City and Owner previously entered into that certain Fiscal Year 2018 City of San Diego Community Development Block Grant Program Subrecipient Agreement, dated as of July 1, 2017 (“Subrecipient Agreement”), through which City provided certain United States Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) program funds to Owner for Owner to acquire or improve, in whole or in part, that certain real property specifically defined as the “Property” in Section1;

B. CDBG program regulations at Title 24 C.F.R. section 570.505 prohibit changing the use or planned use of real property acquired or improved, in whole or in part, with more than $25,000 of CDBG grant funds;

C. Owner is willing to enter into and make this Regulatory Agreement to assure City of the use of the Property for the Eligible Activity (defined in Section1) for at least five (5) years after closeout of the grant provided to Owner under the Subrecipient Agreement;

D. This Regulatory Agreement shall restrict the use of the Property following the date of the first recording of this Regulatory Agreement in the official records of the County of San Diego, California (“Recording Date”), to ensure that the Property shall, at all times from the Recording Date until expiration of this Regulatory Agreement, be used for the Eligible Activity;
NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS REGULATORY AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, OWNER COVENANTS, DECLARES AND AGREES FOR THE BENEFIT OF CITY, AS FOLLOWS:

1. DEFINITIONS. All words, terms or phrases indicated to be defined words, terms or phrases by initial capitalization in this Regulatory Agreement that are not specifically defined in this Regulatory Agreement shall have the meaning given to the word, term or phrase, respectively, in the Subrecipient Agreement. As used in this Regulatory Agreement, the following words, terms or phrases shall have the meaning as provided in the initial paragraph of this Regulatory Agreement, the Recitals, or in this Section 1, unless the specific context of usage of a particular word, term or phrase requires otherwise.

1.1 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.2 Application. Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for Construction of any Improvements, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument as Owner may request; or (b) to enable Owner to seek any Approval or to operate the Property in accordance with the Subrecipient Agreement and this Regulatory Agreement.

1.3 Approval. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete any Improvements or to use or occupy any Improvements.

1.4 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization or similar matters.

1.5 CDBG. Defined in Recital A.

1.6 Certificate of Occupancy. A “certificate of occupancy” as defined in the Uniform Building Code published by the International Conference of Building Officials, as adopted by the City, from time to time.

1.7 City. Defined in the initial paragraph of this Regulatory Agreement.

1.8 City Parties. Collectively, City, the City Council, and the elected officials, employees, agents and attorneys of City.
1.9 **City Party.** Individually, City, the City Council, or the elected officials, employees, agents or attorneys of City.

1.10 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

1.11 **Closeout Date.** The date on the “Closeout Notice” issued by City to Owner pursuant to the Subrecipient Agreement.

1.12 **Condemnation.** Any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by a Government through exercise of the power of eminent domain or other similar proceeding.

1.13 **Construction.** Any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration or other work affecting the Property, including new construction.

1.14 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.15 **Controlling and Controlled.** Exercising or having Control.

1.16 **County.** The County of San Diego, California.

1.17 **Default.** Any Monetary Default or Non-Monetary Default.

1.18 **Eligible Activity.** The activity described in Exhibit B attached to this Regulatory Agreement.

1.19 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge.

1.20 **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances affecting the Property), occupational or environmental conditions affecting the Property, as now or may at any later time be in effect, and any other Federal, State, local or
municipal law, statute, ordinance or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, to the extent the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances affecting the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use.

1.21 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.22 **Event of Default.** The occurrence of any one or more of the following:

1.22.1 **Monetary Default.** A Monetary Default that continues for ten (10) calendar days after Notice from City, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment or evidence of insurance not provided;

1.22.2 **Non-Monetary Default.** Any Non-Monetary Default that is not cured within thirty (30) days after Notice to Owner describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Owner shall only be in Default if the Owner does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the City of Owner’s intention to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.23 **Federal.** Relating or pursuant to the authority of the federal government of the United States of America.

1.24 **Government.** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal or otherwise) whether now or later in existence.

1.25 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law.

1.26 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into, from or
around the Property, or during transportation of any Hazardous Substance to or from the Property, whether or not caused by a Party.

1.27 **HUD.** Defined in Recital A.

1.28 **Improvements.** Any and all physical improvements or modifications to the Property, including building systems or other systems used in the operation of the Property.

1.29 **Indemnify.** Where this Regulatory Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

1.30 **Indemnitee.** Any Person entitled to be Indemnified under the terms of this Regulatory Agreement.

1.31 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Regulatory Agreement.

1.32 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property, in any way, including any development, Construction, use, maintenance, taxation, operation, occupancy of or environmental condition affecting the Property, or otherwise relating to this Regulatory Agreement or any Party’s rights, obligations or remedies under this Regulatory Agreement, or any transfer of any of the foregoing, whether in force on the date of this Regulatory Agreement or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.33 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses, and consultant and expert witness fees and expenses.

1.34 **Mayor.** The Mayor of City or his or her designee or successor in function.

1.35 **Monetary Default.** Any failure by Owner to pay or deposit, when and as this Regulatory Agreement requires, any amount of money or evidence of any insurance coverage required to be provided under this Regulatory Agreement, or the Subrecipient Agreement, whether to or with City or a Third Person.

1.36 **Non-Monetary Default.** The occurrence of any of the following described events, except to the extent constituting a Monetary Default: (a) Owner’s failure to perform any of Owner’s obligations under this Regulatory Agreement; (b) Owner’s failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Regulatory Agreement; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, would constitute a breach of this Regulatory Agreement by Owner.
1.37 **Notice.** Any consent, demand, designation, election, notice or request relating to this Regulatory Agreement, including any Notice of Default. All Notices must be in writing, which includes Notice by e-mail.

1.38 **Notice of Default.** Any Notice of a Default or alleged Default.

1.39 **Notify.** To give a Notice.

1.40 **Owner.** Defined in the initial paragraph of this Regulatory Agreement.

1.41 **Owner Parties.** Collectively, Owner and all of the partners, members, directors, officers, employees, agents, managers and holders of Equity Interests in Owner.

1.42 **Parties.** Collectively, City and Owner.

1.43 **Party.** Individually, either City or Owner, as applicable.

1.44 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.45 **Property.** That certain real property located within the City of San Diego, County of San Diego, State of California, specifically described in the legal description attached as Exhibit “A” to this Regulatory Agreement, which is incorporated into this Regulatory Agreement by this reference.

1.46 **Recital.** Defined in the initial paragraph of this Regulatory Agreement.

1.47 **Record, recorded, recording or recordation.** Recordation of the referenced document in the official records of the County.

1.48 **Recording Date.** Defined in Recital D.

1.49 **Restoration.** After a loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration or safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the loss, subject to any changes in Law that would limit the foregoing.

1.50 **Restore.** Accomplish a Restoration.

1.51 **State.** The State of California.

1.52 **Subrecipient Agreement.** Defined in Recital A.

1.53 **Term.** The period of time beginning on the Recording Date and ending on the fifth (5th) anniversary of the Closeout Date.

1.54 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner,
employee or agent of a Party.

1.55 **Unavoidable Delay.** A delay in either Party performing any obligation under this Regulatory Agreement, arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party’s financial condition or insolvency.

2. **CDBG COVENANTS AND RESTRICTIONS**

2.1 **Owner Acknowledgment of Potential Impact of Regulatory Agreement.** Owner acknowledges and agrees that this Regulatory Agreement imposes certain covenants, conditions and restrictions on the use and occupancy of the Property during the Term that may not constitute the highest and best use of the Property.

Initials Authorized
Owner Representative(s)

2.2. **Agreement to Record.** Owner agrees that City may record this Regulatory Agreement against the Property in the official records of the County.

2.3 **CDBG Restrictive Covenants.** Subject to the terms, conditions and provisions of this Regulatory Agreement, Owner covenants to and for the benefit of City that Owner shall develop, own, manage and operate, or cause the management and operation of, the Property at all times during the Term for the Eligible Activity and excluding any use inconsistent with the Eligible Activity.

2.4 **Continuous Operation Covenant.** Owner covenants to and for the benefit of City to cause the Property to be continuously operated, in accordance with the other provisions of this Section 2, throughout the Term.

2.5 **Abandonment.** Owner shall not abandon or surrender the operation of all or any part of the Property during the Term, except due to material casualty or Condemnation that reasonably justifies such abandonment or surrender.

2.6 **Compliance.** Owner shall, at all times during the Term and at Owner’s sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. **MONITORING.** City shall have the right, but not the obligation, to monitor and enforce the obligations of Owner under this Regulatory Agreement. Owner covenants that it shall comply with any reasonable monitoring program set up by City to monitor or enforce the obligations of Owner under this Regulatory Agreement, including paying all costs associated with the monitoring and enforcement of the obligations of Owner under this Regulatory Agreement.

4. **HAZARDOUS SUBSTANCES**

4.1 **Restrictions.** Owner shall not cause or permit to occur on, under, at or from the
Property during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance, or transportation to or from the Property of any Hazardous Substance, unless both: (i) reasonably necessary and customary to construct, operate or maintain the Property for uses this Regulatory Agreement permits; and (ii) in compliance with all Environmental Laws.

4.2 Compliance; Clean-Up. Owner shall, at Owner’s sole cost and expense: (a) comply with all Environmental Laws applicable to the Property and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under any Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify the City Parties against any Hazardous Substance Discharge or violation of Environmental Law, in accordance with Section 7. Owner’s obligations under this Section 4 shall not limit Owner’s rights against Third Persons (exclusive of the City Parties).

5. OBLIGATION TO REPAIR

5.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 5.4, if the Improvements on the Property shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Owner pursuant to the Subrecipient Agreement, Owner shall promptly proceed to obtain the proceeds of such insurance and take all steps necessary to begin Restoration and, immediately upon receipt of such insurance proceeds, promptly and diligently commence the Restoration of the Improvements to as close as possible to the same condition as the Improvements were in before the casualty, to the extent of the insurance proceeds available to pay the actual cost of Restoration, except that Owner shall pay all deductible or self-insured retention amounts required under the applicable insurance policy or policies, at Owner’s expense. Owner shall complete Restoration of the Improvements as soon as reasonably possible, so that the Property can continue to be used for the Eligible Activity in accordance with this Regulatory Agreement. Subject to extensions of time for Unavoidable Delay, Restoration shall begin within six (6) months after the date Owner obtains the proceeds of insurance covering the casualty, unless the Mayor, in his or her reasonable discretion, approves a longer period of time.

5.2 Failure to Obtain Insurance. If Owner fails to obtain insurance covering casualty loss to the Improvements as required by the Subrecipient Agreement, Owner shall be obligated to Restore any and all partial or total damage to the Improvements in accordance with this Section 5.2 at Owner’s expense.

5.3 Continued Operations. During any period of Restoration of the Improvements, Owner shall continue, or cause the continuation of, the operation of the Property to the extent reasonably practicable from the standpoint of prudent business management.
5.4 **Damage or Destruction Due to Cause Not Required to be Covered by Insurance**. If the Improvements are completely destroyed or substantially damaged by a casualty that Owner is not required to insure against under the Subrecipient Agreement (and Owner has not insured against), then Owner shall not be required to Restore such Improvements and may elect not to Restore such Improvements within ninety (90) days after such substantial damage or destruction by delivering Notice of such election to City. If Owner is not required to Restore damaged Improvements and Owner timely Notifies City of Owner's election not to Restore, Owner shall nevertheless remove all debris from the Property. As used in this Section 5.4, “substantial damage” caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction that is more than ten percent (10%) of the replacement cost of the Improvements. This Regulatory Agreement shall not be affected by Owner’s election not to Restore any Improvements.

6. **CONDEMNATION.** If any portion of the Property is taken by Condemnation during the Term, then Owner shall Restore the remaining portions of the Property with reasonable promptness, to the extent practicable, and this Regulatory Agreement shall not be affected.

7. **INDEMNITY.**

7.1 **Owner Indemnity Obligations.** Owner shall Indemnify the City Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of Owner Parties; (b) any Application made by or at Owner’s request; (c) any agreements that Owner (or anyone claiming by or through Owner) makes with a Third Person regarding the Property; or (d) any Environmental Claim attributable to any action or failure to act by Owner Parties.

7.2 **No City Liability.** During the Term: (a) Owner is and shall be responsible for operation of the Property; and (b) City shall not be liable for any injury or damage to any property (of Owner or any other Person) or any Person occurring on or about the Property, except to the extent caused by City’s wrongful intentional act or negligence.

7.3 **Independent of Insurance Obligations.** Owner’s indemnification obligations under this Regulatory Agreement shall not be construed or interpreted as in any way restricting, limiting or modifying Owner’s insurance or other obligations under this Regulatory Agreement or the Subrecipient Agreement. Owner’s obligation to Indemnify the City Parties under this Regulatory Agreement is independent of Owner’s insurance and other obligations under this Regulatory Agreement or the Subrecipient Agreement. Owner’s compliance with Owner’s insurance obligations under the Subrecipient Agreement and obligations under this Regulatory Agreement shall not in any way restrict, limit or modify Owner’s indemnification obligations under this Regulatory Agreement and are independent of Owner’s other obligations under the Subrecipient Agreement or this Regulatory Agreement.

7.4 **Survival of Indemnification and Defense Obligations.** The indemnity and defense obligations of Owner under this Regulatory Agreement shall survive the expiration or earlier termination of this Regulatory Agreement, until any and all actual or
prospective Claims regarding any matter subject to an indemnity obligation under this Regulatory Agreement are fully, finally, absolutely and completely barred by the applicable statutes of limitations or entry of a court judgment that cannot be appealed or further reviewed.

7.5 **Immediate Duty to Defend.** The duty to defend under this Regulatory Agreement includes Claims for which an Indemnitee may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any Claim within the scope of the Indemnitor's indemnity obligations under this Regulatory Agreement.

7.6 **No Limitation.** Owner acknowledges and agrees that Owner’s duties, obligations and liabilities under this Regulatory Agreement, including under Section 4 and Section 6, are in no way limited or otherwise affected by any information any of the City Parties may have concerning the Property or the presence within the Property of any Hazardous Substance, whether the City Parties obtained such information from Owner, from their own investigations or from a Third Person.

8. **NO CITY RESPONSIBILITY FOR PROPERTY.** City shall have no responsibility for the Construction, installation, management, operation or maintenance of the Improvements or the Property, financially or otherwise.

9. **NOTICE OF LIENS.** Owner shall promptly Notify City of any lien or interest asserted against or attached to all or any portion of the Improvements or the Property, whether by voluntary act of Owner or otherwise, including any and all filings of mechanic’s liens.

10. **COVENANTS RUN WITH THE LAND.** Owner and City declare their mutual specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Regulatory Agreement are part of a plan for the implementation of CDBG eligible activities pursuant to Title 24 Code of Federal Regulations sections 570.1 through 570.913 within the territorial jurisdiction of City, and that each shall be deemed covenants running with the land of the Property, binding upon each successor-in-interest of Owner in the Property for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Regulatory Agreement touch and concern the land of the Property and each of them is expressly declared to be for the benefit and in favor of City for the duration of the Term, regardless of whether City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. City, in the event of any Event of Default under this Regulatory Agreement, has the right to exercise all of the rights and remedies and maintain any actions at law or suits in equity or other proper proceedings, relating to such Event of Default, as provided in this Regulatory Agreement. Owner expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property or any interest in the
Property shall incorporate all of the provisions of this Regulatory Agreement, either expressly or by reference. Each and every contract, deed or other instrument transferring any estate or interest in the Property shall conclusively be deemed to have been executed, delivered and accepted subject to the agreements, covenants, conditions, reservations and restrictions of this Regulatory Agreement, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced in such contract, deed or other instrument.

11. REMEDIES

11.1 Remedies. If an Event of Default occurs, then City shall, in City’s sole and absolute discretion, have the right to exercise any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other provision of this Regulatory Agreement:

11.1.1 Recover CDBG Investment. City may recover from Owner the current fair market value of the Property, less any portion of such fair market value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the Property.

11.1.2 Suits Before End of Term. City may sue Owner for damages or other relief, from time to time, without terminating this Regulatory Agreement, including action in mandamus, specific performance, or other suit, action or proceeding at law or in equity, to require Owner to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of City under this Regulatory Agreement, or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement. Nothing in this Section 11.1.2 shall be construed to prohibit City from suing Owner following expiration or termination of the Term, subject to applicable Laws.

11.1.3 Receipt of Money. No receipt of money by City from Owner after any Notice of Default shall affect any Notice previously given to Owner, or waive City’s right to enforce payment or deposit of any amount payable or later falling due. City and Owner agree that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, City may demand, receive and collect any money due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such money collected being deemed payments on account of Owner’s liability to City.

11.1.4 No Implied Waiver. No failure by City to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Regulatory Agreement or to exercise any right or remedy upon an Event of Default, and no acceptance of full or partial payment of any amount of money due or becoming due to City during the continuance of any such Event of Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of Owner under this Regulatory Agreement, and no Default or Event of Default, shall be modified, except by a
written instrument signed by City. No waiver of any Default or Event of Default shall modify this Regulatory Agreement and each and every covenant, agreement, condition, restriction and reservation of this Regulatory Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default or Event of Default relating to such condition, covenant, agreement, restriction or reservation of this Regulatory Agreement.

11.1.5 **Damages.** City may recover from Owner all damages City incurs by reason of Owner’s Event of Default and reimbursement of City’s reasonable out of pocket costs, including Legal Costs. City may recover such damages at any time after Owner’s Event of Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, City need not commence separate actions to enforce Owner’s obligations for each amount or payment not paid or each month’s accrual of damages or costs for Owner’s Event of Default, but may bring and prosecute a single combined action for all such damages and costs.

11.1.6 **Injunction of Breaches.** Whether or not an Event of Default has occurred, City may obtain a court order enjoining Owner from continuing any Default or from committing any threatened Default. Owner specifically and expressly acknowledges that monetary damages would not constitute an adequate remedy to City for any Non-Monetary Default.

11.2 **Specific Enforcement.** Owner agrees that specific enforcement of Owner’s non-monetary obligations under this Regulatory Agreement is one of the reasons that City entered into the Subrecipient Agreement and that, if Owner breaches any such obligation, potential monetary damages to City, would be difficult, if not impossible, to evaluate or quantify. Therefore, in addition to any other relief to which City may be entitled as a consequence of Owner’s Event of Default under this Regulatory Agreement, Owner agrees to the imposition of the remedy of specific performance against Owner under this Regulatory Agreement.

11.3 **Enforcement.** City shall have the power to enforce this Regulatory Agreement and no other Person shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of City or to compel City to enforce any provision of this Regulatory Agreement against Owner or the Property.

12. **GENERAL PROVISIONS**

12.1 **Relationship of Parties.** Nothing contained in this Regulatory Agreement shall be interpreted or understood by the Parties or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Owner or Owner’s agents, employees or contractors. Owner shall at all times be an independent contractor and shall be wholly responsible for the manner in which Owner or Owner’s agents, or both, perform any services required of them by the terms of this Regulatory Agreement. Except as otherwise expressly provided in this Regulatory Agreement, Owner has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting Owner in the development, operation or maintenance of the Property. Owner shall be solely responsible for all matters relating to payment of Owner’s employees and agents, including compliance with tax
withholding and all other Laws governing such employees or agents. Owner shall be solely responsible for Owner’s own acts and those of Owner’s agents and employees.

12.2 No Subordination. Owner acknowledges and agrees that this Regulatory Agreement shall, at all times and under all circumstances, be prior, paramount, and senior to any other non-statutory lien, encumbrance, interest or estate (whether recorded or not) relating to all or any part of the Property. City shall be under no obligation, under any circumstance or for any reason, to subordinate all or any part of this Regulatory Agreement to any lien, encumbrance, interest, estate or other obligation of Owner relating to all or any part of the Property. Owner shall obtain and record all agreements and instruments necessary to place this Regulatory Agreement in first lien position with respect to the Property.

12.3 No Claims. Nothing contained in this Regulatory Agreement shall create or justify any claim against City by any Person that Owner may have employed or with whom Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to Construction, operation or maintenance of the Property.

12.4 Approvals. Any approvals required from a Party under this Regulatory Agreement shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Regulatory Agreement. Wherever this Regulatory Agreement states that a Party’s approval shall be “reasonable” or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent to any matter, this shall not waive its right to require such consent for any further or similar matter.

12.5 Non-liability of City Officials or Employees. No City Party shall be personally liable to Owner or any successor in interest to Owner, in the event of any breach by City under this Regulatory Agreement.

12.6 Governing Law. This Regulatory Agreement shall be governed by the procedural and substantive laws of the State, without application of conflicts of laws principles or statutes.

12.7 Amendment. This Regulatory Agreement may be amended only by a written instrument signed by the authorized representatives of Owner and City, respectively.

12.8 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Regulatory Agreement. The Parties have participated substantially in the negotiation, drafting and revision of this Regulatory Agreement, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Regulatory Agreement may be used in the plural and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Regulatory Agreement. The words “include” and “including” in this Regulatory Agreement shall
be construed to be followed by the words: “without limitation.” Each collective noun in this Regulatory Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Regulatory Agreement, refers to such document as modified from time to time (except, at City’s option, any modification that violates this Regulatory Agreement), and includes all exhibits, attachments, schedules and riders to such document. The word “or” in this Regulatory Agreement includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

12.9 Attorney’s Fees. If a Party brings a legal action to enforce this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing Party in such action shall be entitled to recover Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such legal action, from the other Party. For the purposes of this Regulatory Agreement, in the case of City, Legal Costs include the salaries, costs and overhead of the lawyers employed in the office of the City Attorney who are legal counsel to City in such an action.

12.10 Severability. If any term or provision of this Regulatory Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Regulatory Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this Regulatory Agreement shall be valid and be enforced to the fullest extent Law allows.

12.11 Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.


12.12.1 Notice. Subject to any specific provisions of this Regulatory Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Regulatory Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

12.12.2 Assumption of Economic Risks. OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY OR CHANGES IN
MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF OWNER THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS REGULATORY AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF OWNER'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS REGULATORY AGREEMENT. ANYTHING IN THIS REGULATORY AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVES, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. OWNER AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS REGULATORY AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE RECORDING DATE.

__Initials of Authorized Owner Representative(s)__

12.13 **Titles and Headings for Reference Only.** The titles and headings of the articles, paragraphs or sections of this Regulatory Agreement are for convenience of reference only and are not to be considered a part of this Regulatory Agreement and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

12.14 **Notices.** Any and all Notices sent by either Party to the other Party pursuant to or as required by this Regulatory Agreement shall be proper, if in writing and transmitted to the address of City or Owner, as applicable, as set forth in Exhibit C attached to this Regulatory Agreement, by one or more of the following methods: (a) e-mail, (b) messenger for immediate personal delivery, (c) a nationally recognized overnight (one business day) delivery service (i.e., Federal Express, United Parcel Service, etc.) or (d) registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this Section 12.14. A Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, when the Notice is transmitted by e-mail, on the date the Notice is delivered by personal delivery, on the date the Notice is delivered (or the date of the second attempted delivery, as set forth in a written statement of the delivery service) by a nationally recognized overnight delivery service or three (3) calendar days after the Notice is deposited with the United States Postal Service as provided in this Section 12.14.
Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no Notice was given, shall be deemed receipt of the Notice. Any attorney representing a Party may give any Notice on behalf of such Party.

12.15 **Counterparts.** This Regulatory Agreement may be signed in multiple counterpart originals, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Regulatory Agreement includes seventeen (17) pages and three (3) attached exhibits.

12.16 **Integration.** This Regulatory Agreement constitutes the entire understanding and integrates all of the terms, conditions, covenants, restrictions, reservations, terms, provisions and agreements of City and Owner regarding the subject matter of this Regulatory Agreement, and supersedes all prior negotiations or previous agreements between City and Owner with respect to the subject matter of this Regulatory Agreement.

12.17 **No Merger.** None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Regulatory Agreement shall be deemed to be merged with any deed conveying title to any estate or interest in the Property.

[Remainder of page intentionally blank. Signatures appear on following page.]
SIGNATURE PAGE
TO
CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY
([INSERT SUB-RECIPIENT NAME OR PROPERTY IDENTIFICATION])

IN WITNESS WHEREOF, Owner and City have signed and entered into this Regulatory Agreement by and through the signatures of their respective authorized representative(s), as set forth below:

CITY:
CITY OF SAN DIEGO,
a municipal corporation

OWNER:

[INSERT OWNER SIGNATURE BLOCK]

By: ______________________________
Lydia Moreno
Deputy Director
Economic Development Department

Approved as to form:

MARA W. ELLIOTT
City Attorney

By: ______________________________
Delmar G. Williams
Deputy City Attorney
EXHIBIT “A”
TO
CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY
( [INSERT SUB-RECIPIENT NAME OR PROPERTY IDENTIFICATION] )

Property Legal Description

[To be inserted.]
EXHIBIT “B”
TO
CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY
([INSERT SUB-RECIPIENT NAME OR PROPERTY IDENTIFICATION] )

Eligible Activity

[To be inserted.]
EXHIBIT “C”
TO
CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY
( [INSERT SUB-RECIPIENT NAME OR PROPERTY IDENTIFICATION] )

Notice Addresses

If to Owner:

Attention: ____________________
E-Mail: ____________________

If to City:

City of San Diego
Economic Development Department
Attn: Community Development Division
Program Manager
1200 Third Avenue
Suite 1400
San Diego, CA 92101
E-Mail: CDBG@sandiego.gov
CONSTRUCTION DOCUMENTS AND SPECIFICATIONS

INDEX OF ATTACHED DOCUMENTS AND SPECIFICATIONS:

1) KPFF Plans and Specifications, sheets S100, S101, S200, SA201, S202, S300, and S400, all dated 8/31/16
2) SoCal Shade Sails Plans and Specifications, sheets S1.0, S2.0, S3.0, S4.0, S4.1, S5.0, S5.1, S6.0, S7.0, and S8.0, all dated 6/13/18
### Scope of Work

The contractor shall manufacture and install all materials necessary for the project, including:

1. Installation of one (1) approx. 10' x 27' cantilevered shade structure, set in concrete footings, and finished as agreed.
2. Installation of two (2) approx. 6' x 14' cantilevered shade structures, set in concrete footings, and finished as agreed.
3. Manufacture and installation of three (3) custom shade sails.
4. Samples available upon request.

### Fabric Info

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GENERAL STRUCTURAL NOTES
APPLY UNLESS NOTED OTHERWISE ON STRUCTURAL DRAWINGS

CODE:
Comply with 2013 California Building Code.

SEISMIC:
I = 1.00; Occupancy Category II
Spectral Response Accelerations: \( S_a = 1.9052, \ S_s = 0.6802; \)
Site Classification 'D'
Spectral Response Coefficients: \( S_{ss} = 1.27, \ S_{ss} = 0.68 \)
Seismic Design Category: D Seismic Response Coeff. \( C_g = 0.1682 \)
Response Modification Factor \( R = 3.50 \)
Resisting System: Ordinary steel moment frames

WIND:
Basic wind speed 115 mph; Exposure 'C';
I = 1.00; Occupancy Category II
Method 2, Open Structures, Pitched Free Roofs (Unobstructed Wind)
Gust Effect Factor: \( G = 0.85, \ q = 14.96 \text{ psf} \)

DEAD LOADS:
Roof: 1 psf + Self-weight of Steel Frame

LIVE LOADS:
Roof: 5 psf (Non-reducible - Table 1607.1)

FOUNDATIONS:
Footings shall bear on firm undisturbed soil at 1'-6" minimum below natural or finish grade, whichever is lower. Allowable soil bearing 1,500 psf. (Table 1806.2 - Class 5 soils)

CONCRETE:
All A.C.I. Codes, recommendations, and manuals apply. Minimum 28 day strength, 2,500 psi. (NO special inspection required.)

REINFORCING:
ASTM A-615 Grade 60 except as follows:
All reinforcing bars deformed except #2 and wire mesh. Latest A.C.I. Code and Detailing Manual apply. Place rebar per CRSI Manual. Unless indicated otherwise in details clear concrete cover to any reinforcing including ties is as follows:

Uniformed concrete placed against rough earth 3"
Former concrete exposed to earth 2"

LAP SPLICES IN CONCRETE:
See drawings. Unless noted otherwise, provide the following lap splices: #3 - 16"; #4 - 22"; #5 - 27"; #6 - 35".

STRUCTURAL STEEL:
ASTM A-36 (Fy = 36,000 p.s.i. minimum) for miscellaneous steel. ASTM A-500, Grade 'B' (Fy = 46,000 p.s.i. minimum) for all tube members (square, rectangular, and round).

Wire rope cables shall be stainless steel material type 302, 304, 305, or 316 using stranded configurations of 7x19 or 7x7. Minimum tensile strength Ft = 105,000 psi.


SUPPLEMENTARY NOTES:
For connections, see detail. If not shown or noted proceed after clarification by the Engineer.

Unless noted otherwise, details on Structural Drawings are typical as indicated by cuts, references, or titles.

Provide all temporary bracing, shoring, guyin or other means to avoid excessive stresses and to hold structural elements in place during construction.

Contractor shall establish and verify in field all existing conditions affecting new construction. Contact contractor immediately if existing conditions are not as depicted in drawings.

ABBREVIATIONS:

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Exp. 05/30/2010

CALIFORNIA CIVIL ENGINEER'S LICENSE

C61570

Date: 06/12/2016

GENERAL STRUCTURAL NOTES

SoCal Santa Clara
1324 P. St.
P.O. Box 4390
Los Angeles, CA 90013
714.555.1122
714.555.1122
www.arpackarchitects.com

#662.901 B-1/C-27

S2.0
NOTE: APPROX. 443 SQUARE FEET OF TOTAL SHADE COVERAGE

NOTE: Dimensions are approximations, field verify all dimensions.
NOTE: APPROX. 220 SQUARE FEET OF TOTAL SHADE COVERAGE

NOTE: USE UNDER SHADE STRUCTURE - UTILITY

NOTE: DIMENSIONS ARE APPROXIMATIONS. FIELD VERIFY ALL DIMENSIONS
NOTE: APPROX. 220
SQUARE FEET OF
TOTAL SHADE COVERAGE

THIS DRAWING HAS BEEN DRAWN UNDER THE
GUIDANCE OF RKN, INC. AND HAS BEEN REVIEWED
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CALCULATIONS AND FOR STRUCTURAL
CORRECTIONS ONLY. THE SCOPE OF RKN, INC.'S
WORK DOES NOT EXCEED THAT OF THE
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NOTE: COLUMNS OUT OF PLUMB AS DETERMINED APPROPRIATE BY INSTALLER
NOTE: DIMENSIONS ARE APPROXIMATIONS, FIELD VERIFY ALL DIMENSIONS
FORM DS-560

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5300

Storm Water Requirements
Applicability Checklist

SECTION 1. Construction Storm Water BMP Requirements:
All construction sites are required to implement construction BMPs in accordance with the performance standards in the Storm Water Management Manual. Some sites are additionally required to obtain coverage under the State Construction General Permit (CGP), which is administered by the State Water Resources Control Board.

For all projects complete PART A: If project is required to submit a SWPPP or WPCC, continue to PART B.

PART A: Determine Construction Phase Storm Water Requirements.

1. Is the project subject to California's statewide General NPDES permit for Storm Water Discharges Associated with Construction Activities, also known as the State Construction General Permit (CGP)? (Typically projects with an impact of greater than or equal to 1 acre.)
   - Yes, SWPPP required, skip questions 2-4
   - No; next question

2. Does the project propose construction or demolition activity, including but not limited to, clearing, grading, grubbing, excavation, or any other activity resulting in ground disturbance and contact with storm water runoff?
   - Yes, WPCC required, skip 3-4
   - No; next question

3. Does the project propose post-construction maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility (projects such as pipe repair or replacement)?
   - Yes, WPCC required, skip 4
   - No; next question

4. Does the project only include the following Permit types listed below?
   - Electrical Permit, Fire Alarm Permit, Fire Sprinkler Permit, Plumbing Permit, Sign Permit, Mechanical Permit, Spa Permit
   - Individual Right of Way Permits that exclusively include only ONE of the following activities: water service, sewer lateral, or utility service
   - Right of Way Permits with a project footprint less than 150 linear feet that exclusively include only ONE of the following activities: curb ramp, sidewalk and driveway apron replacement, pot holing, curb and gutter replacement, and retaining wall encroachments.
   - Yes; no document required

5. Check one of the boxes below, and continue to PART B:
   - [ ] If you checked "Yes" for question 1, a SWPPP IS REQUIRED. Continue to PART B.
   - [ ] If you checked "No" for question 1, and checked "Yes" for question 2 or 3, a WPCC IS REQUIRED. If the project proposes less than 5,000 square feet of ground disturbance and has less than 1 percent elevation change over the entire project area, a Minor WPCC may be required instead. Continue to PART B.
   - [ ] If you checked "No" for all questions 1-3, and checked "Yes" for question 4 PART B does not apply and no document is required. Continue to Section 2.

6. More information on the City’s construction BMP requirements as well as CGP requirements can be found at: www.sandiego.gov/cumw/permitting/sgapcrmp

7. Information required paper. Visit our website at www.sandiego.gov/cumw/permitting/services. Upon request, this information is available in alternative formats for persons with disabilities.

PART B: Determine Construction Site Priority
This prioritization must be completed within this form, noted on the plans, and included in the SWPPP or WPCC. The city reserves the right to adjust the priority of projects both before and after construction. Construction projects are assigned an inspection frequency based on if the project has a "high threat to water quality." The City has also included the definition of "high threat to water quality" to the risk determination approach of the State Construction General Permit (CGP). The CGP determines risk level based on project-specific sediment risk and receiving water risk. Additional inspection is required for projects within the Area of Special Biological Significance (ASBS) watershed. NOTE: The construction priority does not change construction BMP requirements that apply to projects; rather, it determines the frequency of inspections that will be conducted by city staff.

Complete PART B and continued to Section 2.

1. [ ] ASBS
   a. Projects located in the ASBS watershed.

2. [ ] High Priority
   a. Projects 1 acre or more that are determined to be Risk Level 2 or Risk Level 3 per the Construction General Permit and not located in the ASBS watershed.
   b. Projects 1 acre or more that are determined to be LUP Type 2 or LUP Type 3 per the Construction General Permit and not located in the ASBS watershed.

3. [ ] Medium Priority
   a. Projects 1 acre or more but not subject to an ASBS or high priority designation.
   b. Projects determined to be Risk Level 1 or LUP Type 1 per the Construction General Permit and not located in the ASBS watershed.

4. [ ] Low Priority
   a. Projects requiring a Water Pollution Control Plan but not subject to ASBS, high, or medium priority designation.

SECTION 2. Permanent Storm Water BMP Requirements.
Additional information for determining the requirements is found in the Storm Water Management Manual.

PART C: Determine if Not Subject to Permanent Storm Water Requirements.
Projects that are not considered maintenance, or otherwise not categorized as "new development projects" or "redevelopment projects" according to the Storm Water Management Manual are not subject to Permanent Storm Water Requirements.

If “yes” is checked for any number in Part C, proceed to Part F and check “Not Subject to Permanent Storm Water BMP Requirements.”

If “no” is checked for all of the numbers in Part C continue to Part D.

1. Does the project only include interior remodels and/or is the project entirely within an existing enclosed structure and does not have potential to contact storm water?
   - Yes
   - No

2. Does the project only include the construction of overhead or underground utilities without creating new impervious surfaces?
   - Yes
   - No

3. Does the project fall under routine maintenance? Examples include, but are not limited to: roof or exterior structure surface replacement, resurfacing or reconfiguring concrete parking lots or existing roadways without expanding the impervious footprint, and routine replacement of damaged pavement (grinding, overlay, and patch repair)?
   - Yes
   - No
The Chollas Realm
2018
A project of the
Jacobs Center for Neighborhood Innovation
Artist
Roman de Salvo
Design based on the riparian corridors
of the Chollas Creek watershed
Funded by
Community Development Block Grant Funds
provided by the
U.S. Department of Housing & Urban Development
to the City of San Diego
National Endowment for the Arts
County of San Diego
Colonel Frank C. Wood Memorial at
The San Diego Foundation
McGorry Family Foundation
Judy McDonald
PART E. Determination if a Storm Water Management Project (SWMP) is Required

Projects that involve the development of streets, roads, highways, freeways, or off-street parking facilities shall be subject to the following criteria.

1. The project's gross square footage is less than 10,000 square feet or more than 500,000 square feet.
2. The project's gross square footage is less than 10,000 square feet or more than 500,000 square feet.
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PART F. Select the appropriate category based on the outcomes of Part E through Part E.

1. The project is a Permanent Storm Water Management Project (SWMP) site.
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APPENDIX 6 – HUD Section 3 Documents

Contents
1. Section 3 of the HUD Act, 12 U.S.C. 1701u
2. Section 3 of the HUD Act, 24 CFR Part 135
§1701u. Economic opportunities for low- and very low-income persons

(a) Findings
The Congress finds that—

(1) Federal housing and community development programs provide State and local governments and other recipients of Federal financial assistance with substantial funds for projects and activities that produce significant employment and other economic opportunities;

(2) low- and very low-income persons, especially recipients of government assistance for housing, often have restricted access to employment and other economic opportunities;

(3) the employment and other economic opportunities generated by projects and activities that receive Federal housing and community development assistance offer an effective means of empowering low- and very low-income persons, particularly persons who are recipients of government assistance for housing; and

(4) prior Federal efforts to direct employment and other economic opportunities generated by Federal housing and community development programs to low- and very low-income persons have not been fully effective and should be intensified.

(b) Policy
It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

(c) Employment

(1) Public and Indian housing program

(A) In general
The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to give to low- and very low-income persons the training and employment opportunities generated by development assistance provided pursuant to section 1437c of title 42, operating assistance provided pursuant to section 1437g of title 42, and modernization grants provided pursuant to section 1437l of title 42.\(^1\)

(B) Priority
The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To residents of the housing developments for which the assistance is expended.
(ii) To residents of other developments managed by the public or Indian housing agency that is expending the assistance.
(iii) To participants in YouthBuild programs receiving assistance under section 2918a of title 29.
(iv) To other low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.
(2) Other programs

(A) In general

In other programs that provide housing and community development assistance, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(B) Priority

Where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to participants in YouthBuild programs receiving assistance under section 2918a of title 29.

(d) Contracting

(1) Public and Indian housing program

(A) In general

The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance provided pursuant to section 1437c of title 42, operating assistance provided pursuant to section 1437g of title 42, and modernization grants provided pursuant to section 1437/ of title 42, to business concerns that provide economic opportunities for low- and very low-income persons.

(B) Priority

The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To business concerns that provide economic opportunities for residents of the housing development for which the assistance is provided.

(ii) To business concerns that provide economic opportunities for residents of other housing developments operated by the public and Indian housing agency that is providing the assistance.

(iii) To YouthBuild programs receiving assistance under section 2918a of title 29.

(iv) To business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(2) Other programs

(A) In general

In providing housing and community development assistance pursuant to other programs, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(B) Priority

Where feasible, priority should be given to business concerns which provide economic opportunities for low- and very low-income persons residing within the service area of the
project or the neighborhood in which the project is located and to YouthBuild programs receiving assistance under section 2918a of title 29.

(e) Definitions

For the purposes of this section the following definitions shall apply:

(1) Low- and very low-income persons

The terms “low-income persons” and “very low-income persons” have the same meanings given the terms “low-income families” and “very low-income families”, respectively, in section 1437a(b)(2) of title 42.

(2) Business concern that provides economic opportunities

The term “a business concern that provides economic opportunities” means a business concern that—

(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business;

(B) employs a substantial number of such persons; or

(C) meets such other criteria as the Secretary may establish.

(f) Coordination with other Federal agencies

The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Commerce, the Administrator of the Small Business Administration, and such other Federal agencies as the Secretary determines are necessary to carry out this section.

(g) Regulations

Not later than 180 days after October 28, 1992, the Secretary shall promulgate regulations to implement this section.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1968, and not as part of the National Housing Act which comprises this chapter.

October 28, 1992, referred to in subsec. (g), was in the original “the date of enactment of the National Affordable Housing Act Amendments of 1992”, and was translated as meaning the date of enactment of the Housing and Community Development Act of 1992, Pub. L. 102–550, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS


1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: “In the administration by the Secretary of Housing and Urban Development of programs providing direct financial assistance, including community development block grants under title I of the Housing and Community Development Act of 1974, in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, the Secretary shall—

“(1) require, in consultation with the Secretary of Labor, that to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing within the unit of local
government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located; and

“(2) require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.”

1980—Par. (1). Pub. L. 96–399, §329(1), substituted “residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located” for “residing in the area of such project”.

Par. (2). Pub. L. 96–399, §329(2), substituted “residing in the same metropolitan area (or nonmetropolitan county) as the project” for “residing in the area of such project”.


1969—Pub. L. 91–152 substituted provisions making applicable programs providing direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, for provisions making applicable programs authorized by sections 1715(d)(3), 1715z, and 1715z–1 of title I, the low-rent public housing program under the United States Housing Act of 1937, and the rent supplement program under section 101 of the Housing and Urban Development Act of 1965.

**Effective Date of 2006 Amendment**

Pub. L. 109–281, §2(f), Sept. 22, 2006, 120 Stat. 1182, provided that: “This section [enacting section 2918a of Title 29, Labor, amending this section, section 4183 of Title 25, Indians, section 2939 of Title 29, and section 12870 of Title 42, The Public Health and Welfare, and repealing sections 12899 to 12899i of Title 42] and the amendments made by this section take effect on the earlier of—

“(1) the date of enactment of this Act [Sept. 22, 2006]; and

“(2) September 30, 2006.”

**Effectiveness Study**

Section 916 of Pub. L. 102–550 provided that:

“(a) IN GENERAL.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than 1 year after the date of the enactment of this Act [Oct. 28, 1992], a report describing—

“(1) the Secretary’s efforts to enforce section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u];

“(2) the barriers to full implementation of section 3 of the Housing and Urban Development Act of 1968;

“(3) the anticipated costs and benefits of full implementation of section 3 of the Housing and Urban Development Act of 1968; and

“(4) recommendations for legislative changes to enhance the effectiveness of section 3 of the Housing and Urban Development Act of 1968.

“(b) CONTENTS.—

“(1) ENFORCEMENT.—The description under subsection (a)(1) of the Secretary’s enforcement efforts shall include, at a minimum—

“(A) a discussion of how responsibility for implementing section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u] is allocated within the Department of Housing and Urban Development;

“(B) a discussion of the status of existing regulations implementing such section 3;

“(C) a discussion of ongoing efforts to enforce current regulations;

“(D) a list of the programs under the responsibility of the Secretary with respect to which the Secretary is enforcing section 3; and

“(E) a separate description of the activities carried out under section 3 with respect to each of these programs.
“(2) IMPEDIMENTS.—The discussion under subsection (a)(2) of the external impediments to effective enforcement of section 3 of the Housing and Urban Development Act of 1968 shall include, at a minimum, a discussion of—

“(A) any lack of necessary training for targeted employees and technical assistance to targeted businesses;
“(B) any barriers created by Federal, State, or local procurement regulations or other laws;
“(C) any difficulties in coordination with labor unions;
“(D) any difficulties in coordination with other implicated Federal agencies; and
“(E) any lack of resources on the part of recipients of assistance who are responsible for carrying out section 3 of the Housing and Urban Development Act of 1968.

“(c) CONSULTATION.—In preparing the report under this subsection, the Secretary shall consult with the Secretary of Labor, the Secretary of Commerce, the Secretary of Health and Human Services, the Administrator of the Small Business Administration, other appropriate Federal officials, and recipients of Federal housing and community development assistance who are responsible for executing section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u]."

\(^1\) See References in Text note below.
§ 135.1 Purpose.

(a) Section 3. The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) Part 135. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.

(a) Section 3 covered assistance. Section 3 applies to the following HUD assistance (section 3 covered assistance): (i) Public and Indian housing assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance: (i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act); (ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and (iii) Modernization assistance provided pursuant to section 14 of the 1937 Act; (2) Housing and community development assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects: (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement); (ii) Housing construction; and (iii) Other public construction. (3) Thresholds—(1) No thresholds for section 3 covered public and Indian housing assistance. The requirements of this part apply to all contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds $200,000.

(b) Part 135. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

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(b) Part 135. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

[60 FR 28326, May 31, 1995]
(C) Threshold met for recipients, but not contractors or subcontractors. If a recipient receives section 3 covered housing or community development assistance in excess of $200,000, but no contract exceeds $100,000, the section 3 preference requirements only apply to the recipient.

(b) Applicability of section 3 to entire project or activity funded with section 3 assistance. The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) Applicability to Indian housing authorities and Indian tribes. Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) Other HUD assistance and other Federal assistance. Recipients, contractors and subcontractors that receive HUD assistance described in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms Department, HUD, Indian housing authority (IHA), Public housing agency (PHA), and Secretary are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low-income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low-income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of “section 3 business concern” in this section.

Contract. See the definition of “section 3 covered contract” in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in §135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection
with section 3 covered projects (as described in 135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD’s public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of “section 3 resident” in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:
(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.
(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.304(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for “section 3 covered projects,” as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.


Section 3 business concern means a business concern, as defined in this section—
(1) That is 51 percent or more owned by section 3 residents; or
(2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 clause means the contract provisions set forth in §135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means: (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act; (2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act; (3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act; (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with: (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement); (ii) Housing construction; or (iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. “Section 3 covered contracts” do not include contracts awarded under HUD’s procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See §135.40. Section 3 resident means: (1) A public housing resident; or (2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(1) A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median income for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(2) A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that

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§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; provided however, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) Certification of compliance with part 135. All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant’s certification unless there is evidence substantially challenging the certification.

(b) Statement of purpose in NOFAs. (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed $200,000, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.
(c) Section 3 as NOFA evaluation criteria. Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) Procurement standards for States and local governments (24 CFR §135.36)—(1) General. Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR §135.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR §135.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) Flexible Subsidy Program. Multifamily project mortgagees in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR §135.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagee, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) Procurement standards for other recipients (OMB Circular No. A–110). Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A–110, certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a–276a–7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in “approved apprenticeship and training programs,” as described in paragraph (d) of this section.

(d) Approved apprenticeship and trainee programs. Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(e) Compliance with Executive Order 11246. Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended
by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) General. (1) Recipients and covered contractors may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) Training and employment. The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) Numerical goals for section 3 covered public and Indian housing programs. Recipients of section 3 covered public and Indian housing assistance (as described in §135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) Numerical goals for other HUD programs covered by section 3. (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontracts awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.* (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in §135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§ 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in §135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in §135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in §135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist
§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority;

(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) Eligibility for preference. A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.

(c) Eligibility for employment. Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(b) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments
for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) Eligibility for preference. A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in §135.5.

(c) Ability to complete contract. A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This regulation requires consideration of, among other factors, the potential contractor’s record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR.
part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

F. Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.40 Providing other economic opportunities.

(a) General. In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) Other training and employment related opportunities. Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies; hiring section 3 residents in management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) Other business related economic opportunities. (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.
part, and the procedures governing the Assistant Secretary’s review of a recipient’s or contractor’s compliance with the regulations in this part.

(b) Definitions. For purposes of this subpart:

1. Complaint means an allegation of noncompliance with regulations of this part made in the form described in §135.76(d).
2. Complainant means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.
3. Noncompliance with section 3 means failure by a recipient or contractor to comply with the requirements of this part.
4. Respondent means the recipient or contractor against which a complaint of noncompliance has been filed. The term “recipient” shall have the meaning set forth in §135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under §135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.74 Section 3 compliance review procedures.

(a) Compliance reviews by Assistant Secretary. The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) Form of compliance review. A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient’s or contractor’s compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) Where compliance review reveals noncompliance with section 3 by recipient or contractor. Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) Continuing noncompliance by recipient or contractor. A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.
Debarment, suspension and limited denial of participation pursuant to HUD’s regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) Conducting compliance review before the award of assistance. Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) Consideration of complaints during compliance review. Complaints alleging noncompliance with section 3, as provided in §135.76, may also be considered during any compliance review conducted to determine the recipient’s conformance with regulations in this part.

§ 135.76 Filing and processing complaints.

(a) Who may file a complaint. The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) Where to file a complaint. A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) Time of filing. (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) Contents of complaint—(1) Written complaints. Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant’s name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) Amendment of complaint. Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) Resolution of complaint by recipient. (1) Within ten (10) days of timely filing of a complaint that contains complete
Office of Asst. Secy., Equal Opportunity, HUD § 135.76

information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) Informal resolution of complaint by Assistant Secretary—(1) Dismissal of complaint. Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) Informal resolution. Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) Effective date of informal resolution. The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) Sanctions. Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) Investigation of complaint. The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(1) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this part. The identity of
complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) Judicial relief. Nothing in this subpart D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529–0043)

APPENDIX TO PART 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

1. Entering into “first source” hiring agreements with organizations representing Section 3 residents.

2. Sponsoring a HUD-certified “Step-Up” employment and training program for section 3 residents.

3. Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

4. Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.

5. Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

6. Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

7. Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

8. Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2...
persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA’s or contractor’s training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor’s training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as “force account labor” in HUD’s Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HDFs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying section 3 business concerns to respond to the bid invitations or request for proposals.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HA, participating in the “Contracting with Resident-Owned Businesses” program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the “contracting party”) for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) Small Purchase Procedures. For section 3 covered contracts aggregating no more than $25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

— the section 3 covered contract to be awarded with sufficient specificity;

— the time within which quotations must be submitted; and

— the information that must be submitted with each quotation.

(B) If the method described in paragraph (1)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) Award. (A) Where the section 3 covered contract is to be awarded based on the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation must identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(ii) Procurement by sealed bids (Invitations for Bids). Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:
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(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

| When the lowest responsive bid is less than $100,000 | 10% of that bid or $9,000. |
| When the lowest responsive bid is: | |
| At least $100,000, but less than $200,000 | 9% of that bid, or $16,000. |
| At least $200,000, but less than $300,000 | 8% of that bid, or $21,000. |
| At least $300,000, but less than $400,000 | 7% of that bid, or $24,000. |
| At least $400,000, but less than $500,000 | 6% of that bid, or $25,000. |
| At least $500,000, but less than $1 million | 5% of that bid, or $40,000. |
| At least $1 million, but less than $2 million | 4% of that bid, or $60,000. |
| At least $2 million, but less than $4 million | 3% of that bid, or $80,000. |
| At least $4 million, but less than $7 million | 2% of that bid, or $105,000. |
| $7 million or more | 1½% of the lowest responsive bid, with no dollar limit. |

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor’s section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor’s responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec. 146.1 Purpose of the Age Discrimination Act of 1975.
146.3 Purpose of HUD's age discrimination regulation.
146.5 Applicability of part.
146.7 Definitions.

Subpart B—Standards for Determining Age Discrimination

146.11 Scope of subpart.
146.13 Rules against age discrimination.

Subpart C—Duties of HUD Recipients

146.21 General responsibilities.
146.23 Notice of subrecipients.
146.25 Assurance of compliance and recipient assessment of age distinctions.
146.27 Information requirements.

Subpart D—Investigation, Settlement, and Enforcement Procedures

146.31 Compliance reviews.
146.33 Complaints.
146.35 Mediation.
146.37 Investigation.
146.39 Enforcement procedures.
146.41 Prohibition against intimidation or retaliation.
INVITATION FOR BID – APPENDIX 7

CURRENT CALIFORNIA DAVIS-BACON WAGE DETERMINATION
CA1800001 11/02/18
General Decision Number: CA180001 11/02/2018  CA1

Superseded General Decision Number: CA20170001

State: California

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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<td>11/02/2018</td>
</tr>
</tbody>
</table>

ASBE0005-002 07/01/2018

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos Workers/Insulator</td>
<td></td>
</tr>
<tr>
<td>(Includes the application of all insulating materials,</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate ID</th>
<th>Description</th>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASBE0005-004</td>
<td>Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls)</td>
<td>$ 39.72</td>
<td>20.81</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$ 27.92</td>
<td>18.31</td>
</tr>
<tr>
<td></td>
<td></td>
<td>---------------</td>
<td>------------------</td>
</tr>
<tr>
<td>ASBE0005-004</td>
<td>Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)</td>
<td>$ 19.93</td>
<td>11.72</td>
</tr>
<tr>
<td></td>
<td></td>
<td>---------------</td>
<td>------------------</td>
</tr>
<tr>
<td>BOIL0092-003</td>
<td>BOILERMAKER</td>
<td>$ 44.07</td>
<td>33.52</td>
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<td></td>
<td></td>
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<td>------------------</td>
</tr>
<tr>
<td>BRCA0004-008</td>
<td>BRICKLAYER; MARBLE SETTER</td>
<td>$ 37.46</td>
<td>16.69</td>
</tr>
<tr>
<td></td>
<td></td>
<td>---------------</td>
<td>------------------</td>
</tr>
<tr>
<td>BRCA0018-004</td>
<td>MARBLE FINISHER</td>
<td>$ 30.93</td>
<td>12.95</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$ 25.98</td>
<td>11.23</td>
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<td></td>
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<td>$ 37.76</td>
<td>16.37</td>
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<tr>
<td>BRCA0018-010</td>
<td>TERRAZZO FINISHER</td>
<td>$ 29.75</td>
<td>12.91</td>
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<td></td>
<td></td>
<td>$ 36.75</td>
<td>13.82</td>
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<td>------------------</td>
</tr>
<tr>
<td>CARP0409-002</td>
<td>Diver</td>
<td>(1) Wet: $ 712.48</td>
<td>17.03</td>
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<tr>
<td></td>
<td></td>
<td>(2) Standby: $ 356.24</td>
<td>17.03</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) Tender: $ 348.24</td>
<td>17.03</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4) Assistant Tender: $ 324.24</td>
<td>17.03</td>
</tr>
</tbody>
</table>

Amounts in "Rates' column are per day

https://www.wdol.gov/wdol/scafiles/davisbacon/CA1.dvb?v=16
### Modular Furniture Installer

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$17.00</td>
<td>7.41</td>
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### CARP0547-001 07/01/2016

<table>
<thead>
<tr>
<th>Rates</th>
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<tbody>
<tr>
<td>$40.33</td>
<td>17.03</td>
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<tr>
<td>$35.10</td>
<td>17.03</td>
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<tr>
<td>$40.20</td>
<td>17.03</td>
</tr>
<tr>
<td>$28.08</td>
<td>17.03</td>
</tr>
<tr>
<td>$18.00</td>
<td>8.16</td>
</tr>
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</table>

### MILLWRIGHT

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
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<tbody>
<tr>
<td>$46.70</td>
<td>17.03</td>
</tr>
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### PILEDRIVERMAN

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$40.33</td>
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### CARP0547-002 07/01/2017

<table>
<thead>
<tr>
<th>Rates</th>
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<tbody>
<tr>
<td>$22.95</td>
<td>18.85</td>
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<tr>
<td>$12.50</td>
<td>12.27</td>
</tr>
<tr>
<td>$32.00</td>
<td>17.63</td>
</tr>
<tr>
<td>$12.50</td>
<td>12.27</td>
</tr>
</tbody>
</table>

---

### Drywall

1. Work on wood framed construction of single family residences, apartments or condominiums under four stories

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$22.95</td>
<td>18.85</td>
</tr>
<tr>
<td>$12.50</td>
<td>12.27</td>
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</tbody>
</table>

2. All other work

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$32.00</td>
<td>17.63</td>
</tr>
<tr>
<td>$12.50</td>
<td>12.27</td>
</tr>
</tbody>
</table>

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### ELEC0569-001 06/04/2018

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
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<tbody>
<tr>
<td>$50.81</td>
<td>3%+13.63</td>
</tr>
<tr>
<td>$50.06</td>
<td>3%+13.63</td>
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### ELEC0569-004 06/04/2018

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$45.25</td>
<td>3%+13.63</td>
</tr>
<tr>
<td>$44.50</td>
<td>3%+13.63</td>
</tr>
</tbody>
</table>

---

### ELECTRICIAN (Sound & Communications Sound Technician)

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$31.75</td>
<td>3%+11.78</td>
</tr>
</tbody>
</table>

**SCOPE OF WORK**

Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other...
recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

ELEC0569-005 06/04/2018

Rates Fringes

Sound & Communications

Sound Technician............$ 31.75 3%+11.78

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, freqency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

SOUND TECHNICIAN: Terminating, operating and performing final check-out

* ELEC0569-006 10/01/2018

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

Rates Fringes

Traffic signal, street light and underground work

Utility Technician #1.......$ 32.44 8.67
Utility Technician #2.......$ 27.05 8.51

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.
<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ELEC0569-008 06/04/2018</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ELECTRICIAN (Residential, 1-3 Stories)</strong></td>
<td>$33.38</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
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</thead>
<tbody>
<tr>
<td><strong>ELEC1245-001 06/01/2018</strong></td>
<td></td>
</tr>
<tr>
<td><strong>LINE CONSTRUCTION</strong></td>
<td></td>
</tr>
<tr>
<td>(1) Lineman; Cable splicer</td>
<td>$56.79</td>
</tr>
<tr>
<td>(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead &amp; underground distribution line equipment)</td>
<td>$45.36</td>
</tr>
<tr>
<td>(3) Groundman</td>
<td>$34.68</td>
</tr>
<tr>
<td>(4) Powderman</td>
<td>$49.55</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ELEV0018-001 01/01/2018</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ELEVATOR MECHANIC</strong></td>
<td>$53.85</td>
</tr>
</tbody>
</table>

FOOTNOTE:
PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
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<tbody>
<tr>
<td><strong>ENGI0012-003 07/01/2018</strong></td>
<td></td>
</tr>
<tr>
<td><strong>OPERATOR: Power Equipment (All Other Work)</strong></td>
<td></td>
</tr>
<tr>
<td>GROUP 1</td>
<td>$45.30</td>
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<tr>
<td>GROUP 2</td>
<td>$46.08</td>
</tr>
<tr>
<td>GROUP 3</td>
<td>$46.37</td>
</tr>
<tr>
<td>GROUP 4</td>
<td>$47.86</td>
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<tr>
<td>GROUP 5</td>
<td>$48.96</td>
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<tr>
<td>GROUP 6</td>
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<td>$48.48</td>
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<tr>
<td>GROUP 13</td>
<td>$48.58</td>
</tr>
<tr>
<td>GROUP 14</td>
<td>$48.61</td>
</tr>
</tbody>
</table>
GROUP 15....................$ 48.69            25.25
GROUP 16....................$ 48.81            25.25
GROUP 17....................$ 48.98            25.25
GROUP 18....................$ 49.08            25.25
GROUP 19....................$ 49.19            25.25
GROUP 20....................$ 49.31            25.25
GROUP 21....................$ 49.48            25.25
GROUP 22....................$ 49.58            25.25
GROUP 23....................$ 49.69            25.25
GROUP 24....................$ 49.81            25.25
GROUP 25....................$ 49.98            25.25

OPERATOR: Power Equipment
(Cranes, Piledriving & Hoisting)

GROUP 1....................$ 46.65            25.25
GROUP 2....................$ 47.43            25.25
GROUP 3....................$ 47.72            25.25
GROUP 4....................$ 47.86            25.25
GROUP 5....................$ 48.08            25.25
GROUP 6....................$ 48.19            25.25
GROUP 7....................$ 48.31            25.25
GROUP 8....................$ 48.48            25.25
GROUP 9....................$ 48.65            25.25
GROUP 10....................$ 49.65            25.25
GROUP 11....................$ 50.65            25.25
GROUP 12....................$ 51.65            25.25
GROUP 13....................$ 52.65            25.25

OPERATOR: Power Equipment
(Tunnel Work)

GROUP 1....................$ 47.15            25.25
GROUP 2....................$ 47.93            25.25
GROUP 3....................$ 48.22            25.25
GROUP 4....................$ 48.39            25.25
GROUP 5....................$ 48.58            25.25
GROUP 6....................$ 48.69            25.25
GROUP 7....................$ 48.81            25.25

PREMIUM PAY:
$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher
GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yd.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite
work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or
similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less than 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth-moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self-loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds.)
GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist
operator, stiff legs, Guy derrick or similar type (up to
and including 25 ton capacity); Shovel, backhoe, dragline,
clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including
50 tons mrc); Derrick barge operator (over 25 tons up to
and including 50 tons mrc); Highline cableway operator;
Hoist operator, stiff legs, Guy derrick or similar type
(over 25 tons up to and including 50 tons mrc); K-crane
operator; Polar crane operator; Self erecting tower crane
operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and
including 100 tons mrc); Derrick barge operator (over 50
tons up to and including 100 tons mrc); Hoist operator,
stiff legs, Guy derrick or similar type (over 50 tons up to
and including 100 tons mrc), Mobile tower crane operator
(over 50 tons, up to and including 100 tons M.R.C.); Tower
crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and
including 200 tons mrc); Derrick barge operator (over 100
tons up to and including 200 tons mrc); Hoist operator,
stiff legs, Guy derrick or similar type (over 100 tons up
to and including 200 tons mrc); Mobile tower crane operator
(over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including
300 tons mrc); Derrick barge operator (over 200 tons up to
and including 300 tons mrc); Hoist operator, stiff legs,
Guy derrick or similar type (over 200 tons, up to and
including 300 tons mrc); Mobile tower crane operator (over
200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge
operator (over 300 tons); Helicopter pilot; Hoist operator,
stiff legs, Guy derrick or similar type (over 300 tons);
Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without
attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and
including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck);
Slip form pump operator (power-driven hydraulic lifting
device for concrete forms); Tugger hoist operator (1 drum);
Tunnel locomotive operator (over 10 and up to and including
30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.);
Small Ford, Case or similar; Drill doctor; Grouting machine
operator; Heading shield operator; Heavy-duty repairperson;
Loader operator (Athey, Euclid, Sierra and similar types);
Mucking machine operator (1/4 yd., rubber-tired, rail or
track type); Pneumatic concrete placing machine operator
(Hackley-Presswell or similar type); Pneumatic heading
shield (tunnel); Pumpcrete gun operator; Tractor compressor
drill combination operator; Tugger hoist operator (2 drum);
Tunnel locomotive operator (over 30 tons)
GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R32E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SMB. Continue E along south boundary of T11N, SMB to SW corner of T11N, R17W, SMB. Continue S to SW corner of T9N, R7W, SMB. Continue E along south boundary of T9N, SMB to SW corner of T9N, R1E, SMB. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SMB. Continue E along south boundary of T1S, SMB (Riverside County Line) to SW corner of T1S, R10E, SMB. Continue S along west boundary of R10E, SMB to Imperial County line at the SW corner of T8S, R10E, SMB. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SMB. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SMB to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SMB.

$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SMB to the SW corner of T9N, R30W, SMB. Continue E along the south edge of T9N, SMB to the Santa Barbara County and Ventura County boundary at that point which
is the SW corner of Section 34, T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a thin strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue West along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 34, T24S, R40E, MDM. Continue E along the Inyo and Kern County boundary until the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

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ENGI0012-004 08/01/2015

<table>
<thead>
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<th>Rates</th>
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<tr>
<td>OPERATOR: Power Equipment (DREDGING)</td>
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<tr>
<td>(1) Leverman ............... $ 49.50</td>
<td>23.60</td>
</tr>
<tr>
<td>(2) Dredge dozer .......... $ 43.53</td>
<td>23.60</td>
</tr>
<tr>
<td>(3) Deckmate .............. $ 43.42</td>
<td>23.60</td>
</tr>
<tr>
<td>(4) Winch operator (stern winch on dredge) ................ $ 42.87</td>
<td>23.60</td>
</tr>
<tr>
<td>(5) Fireman-Oiler, Deckhand, Bargeman,</td>
<td></td>
</tr>
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</table>
Leveehand...................$ 42.33            23.60
(6) Barge Mate..............$ 42.94            23.60

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IRON0377-002 07/01/2018

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<td>Ironworkers:</td>
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<tr>
<td>Fence Erector..............$ 31.58</td>
<td>22.41</td>
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<tr>
<td>Ornamental, Reinforcing and Structural..............$ 38.00</td>
<td>31.05</td>
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PREMIUM PAY:

$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island,

$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

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LAB00089-001 07/01/2018

<table>
<thead>
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<th>Rates</th>
<th>Fringes</th>
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<td>LABORER (BUILDING and all other Residential Construction)</td>
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</tr>
<tr>
<td>Group 1.................. $ 31.31</td>
<td>19.29</td>
</tr>
<tr>
<td>Group 2.................. $ 31.99</td>
<td>19.29</td>
</tr>
<tr>
<td>Group 3.................. $ 32.70</td>
<td>19.29</td>
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<tr>
<td>Group 4.................. $ 33.50</td>
<td>19.29</td>
</tr>
<tr>
<td>Group 5.................. $ 35.43</td>
<td>19.29</td>
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</tbody>
</table>

LABORER (RESIDENTIAL CONSTRUCTION - See definition below)

(1) Laborer..................$ 27.32 | 18.11 |
(2) Cleanup, Landscape, Fencing (Chain Link & Wood).$ 26.03 | 18.11 |

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominiums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way.

LABORER CLASSIFICATIONS
GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rough Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Sheet-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction tcc laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filling of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demolition); Guinea chaser; Headboard man-asphalt; Laborer, packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson beller

GROUP 3: Buggymobile; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including drilling of same); Hydro seeder and similar type; Impact wrench, multi-plate; Kettlemen, potmen and mean applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air blasting, come-along, and similar mechanical tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, asphalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid, gas, air or other
product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller-all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LABOR CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber, Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer;
Kettleman-Potman hot mop, includes applying asphalt, lay-kold, creosote, lime caustic and similar types of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulking, diapering including rubber basket joints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all fabrics; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer - Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter, Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work. High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Along and similar mechanical tools, Remote-Controlled Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting, making of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prefabricated Manhole Installer, Sandblast Nozzelman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman - All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

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LAB00300-005 01/01/2018

<table>
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<th>Rates</th>
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https://www.wdol.gov/wdol/scaffiles/davisbacon/CA1.dvb?v=16
Asbestos Removal Laborer.........$ 33.19            17.78

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos-containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO0345-001 07/01/2018

<table>
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<td>LABORER (GUNITE)</td>
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<tr>
<td>GROUP 1.....................$ 42.18            18.27</td>
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<tr>
<td>GROUP 2.....................$ 41.23            18.27</td>
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<tr>
<td>GROUP 3.....................$ 37.69            18.27</td>
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FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bos'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0" above base level and which work must be performed in whole or in part more than 75'-0" above base level, that work performed above the 75'-0" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen
GROUP 2: Gunmen
GROUP 3: Reboundmen

LABO1184-001 07/01/2018

<table>
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<th>Rates</th>
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<tbody>
<tr>
<td>Laborers: (HORIZONTAL DIRECTIONAL DRILLING)</td>
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<tr>
<td>(1) Drilling Crew Laborer...$ 35.70            14.03</td>
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<tr>
<td>(2) Vehicle Operator/Hauler.$ 35.87            14.03</td>
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<tr>
<td>(3) Horizontal Directional Drill Operator.........$ 37.72            14.03</td>
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</tr>
<tr>
<td>(4) Electronic Tracking Locator.....................$ 39.72            14.03</td>
<td></td>
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<tr>
<td>Laborers: (STRIPING/SLURRY SEAL)</td>
<td></td>
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<tr>
<td>GROUP 1..........................$ 35.86            16.21</td>
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<tr>
<td>GROUP 2..........................$ 37.16            16.21</td>
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<tr>
<td>GROUP 3..........................$ 39.17            16.21</td>
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<tr>
<td>GROUP 4..........................$ 40.91            16.21</td>
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LABORERS - STRIPING CLASSIFICATIONS
GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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LABORER

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
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<tbody>
<tr>
<td>PLASTER CLEAN-UP LABORER</td>
<td>$33.82</td>
<td>19.40</td>
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<tr>
<td>PLASTER TENDER</td>
<td>$36.37</td>
<td>19.40</td>
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Work on a swing stage scaffold: $1.00 per hour additional.

Work at Military Bases - $3.00 additional per hour:
- Coronado Naval Amphibious Base
- Fort Irwin, Marine Corps Air Station-29 Palms
- Imperial Beach Naval Air Station
- Marine Corps Logistics Supply Base
- Marine Corps Pickle Meadows
- Mountain Warfare Training Center
- Naval Air Facility-Seeley
- North Island Naval Air Station
- Vandenberg AFB

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Painters: (Including Lead Abatement)

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<tr>
<th>Description</th>
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<tr>
<td>Repaint (excludes San Diego County)</td>
<td>$27.59</td>
<td>14.92</td>
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<tr>
<td>All Other Work</td>
<td>$31.12</td>
<td>15.04</td>
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REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate
commercial establishments as part of hotel service, and sports facilities.

* PAIN0036-010 10/01/2018

<table>
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<td>DRYWALL FINISHER/TAPER</td>
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<td>(1) Building &amp; Heavy Construction</td>
<td>$33.39 16.80</td>
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<tr>
<td>(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories)</td>
<td>$24.02 17.01</td>
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* PAIN0036-012 10/01/2018

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<tbody>
<tr>
<td>GLAZIER</td>
<td></td>
</tr>
<tr>
<td>$43.55</td>
<td>19.72</td>
</tr>
</tbody>
</table>

* PAIN0036-019 01/01/2018

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOFT FLOOR LAYER</td>
<td></td>
</tr>
<tr>
<td>$30.02</td>
<td>13.68</td>
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</table>

PLAS0200-005 08/01/2018

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLASTERER</td>
<td></td>
</tr>
<tr>
<td>$36.86</td>
<td>18.00</td>
</tr>
</tbody>
</table>

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS BASE, IMPERIAL BEACH NAVAL AIR STATION: $3.00 additional per hour.

PLAS0500-001 07/01/2018

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEMENT MASON/CONCRETE FINISHER</td>
<td></td>
</tr>
<tr>
<td>GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.</td>
<td>$26.34 21.12</td>
</tr>
<tr>
<td>GROUP 2: Work classified as type I and II construction</td>
<td>$27.99 21.12</td>
</tr>
<tr>
<td>GROUP 3: All other work</td>
<td>$30.07 21.12</td>
</tr>
</tbody>
</table>

CEMENT MASON/CONCRETE FINISHER - work inside the building line, meeting the following criteria:

GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 09/01/2018
<table>
<thead>
<tr>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PLUMBER, PIPIEFITTER, STEAMFITTER</strong></td>
<td></td>
</tr>
<tr>
<td>Camp Pendleton......................$ 54.63</td>
<td>22.16</td>
</tr>
</tbody>
</table>
| Plumber and Pipefitter  
All other work except work on new additions and remodeling of bars, restaurants, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work  
Work ONLY on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space......................$ 48.58 | 21.18   |
| Work ONLY on strip malls, light commercial, tenant improvement and remodel work........................$ 37.10 | 19.51   |

<table>
<thead>
<tr>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PLUMBER/PIPEFITTER</strong></td>
<td></td>
</tr>
<tr>
<td>Residential...........................$ 40.23</td>
<td>18.08</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PLUMBER</strong></td>
<td></td>
</tr>
<tr>
<td>Landscape/Irrigation Fitter.$ 44.16</td>
<td>25.19</td>
</tr>
<tr>
<td>Sewer &amp; Storm Drain Work....$ 44.16</td>
<td>25.19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ROOFER</strong></td>
<td></td>
</tr>
<tr>
<td>.....................$ 31.00</td>
<td>8.62</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SPRINKLER FITTER</strong></td>
<td></td>
</tr>
<tr>
<td>.....................$ 40.57</td>
<td>21.18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SHEET METAL WORKER</strong></td>
<td></td>
</tr>
<tr>
<td>Camp Pendleton..............$ 38.88</td>
<td>26.52</td>
</tr>
<tr>
<td>Except Camp Pendleton......$ 36.88</td>
<td>26.52</td>
</tr>
<tr>
<td>Sheet Metal Technician......$ 27.70</td>
<td>8.43</td>
</tr>
</tbody>
</table>

**SHEET METAL TECHNICIAN - SCOPE:**

https://www.wdol.gov/wdol/scafiles/davisbacon/CA1.dvb?v=16
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system  
b. New single family residential buildings including tracts.  
c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded.  
d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000  
e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

---

TEAM0166-001 07/03/2017

<table>
<thead>
<tr>
<th>Truck drivers:</th>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>GROUP 1</td>
<td>$ 15.90</td>
<td>34.69</td>
</tr>
<tr>
<td>GROUP 2</td>
<td>$ 23.49</td>
<td>34.69</td>
</tr>
<tr>
<td>GROUP 3</td>
<td>$ 23.69</td>
<td>34.69</td>
</tr>
<tr>
<td>GROUP 4</td>
<td>$ 23.89</td>
<td>34.69</td>
</tr>
<tr>
<td>GROUP 5</td>
<td>$ 24.09</td>
<td>34.69</td>
</tr>
<tr>
<td>GROUP 6</td>
<td>$ 24.59</td>
<td>34.69</td>
</tr>
<tr>
<td>GROUP 7</td>
<td>$ 26.09</td>
<td>34.69</td>
</tr>
</tbody>
</table>

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Fuel Man, Swamper

GROUP 2: 2-axle Dump Truck, 2-axle Flat Bed, Concrete Pumping Truck, Industrial Lift Truck, Motorized Traffic Control, Pickup Truck on Jobsite

GROUP 3: 2-axle Water Truck, 3-axle Dump Truck, 3-axle Flat Bed, Erosion Control Nozzleman, Dumpcrete Truck under 6.5 yd, Forklift 15,000 lbs and over, Prell Truck, Pipeline Work Truck Driver, Road Oil Spreader, Cement Distributor or Slurry Driver, Bootman, Ross Carrier

GROUP 4: Off-road Dump Truck under 35 tons 4-axles but less than 7-axles, Low-Bed Truck & Trailer, Transit Mix Trucks under 8 yd, 3-axle Water Truck, Erosion Control Driver, Grout Mixer Truck, Dumpcrete 6.5yd and over, Dumpster Trucks, DW 10, DW 20 and over, Fuel Truck and Dynamite, Truck Greaser, Truck Mounted Mobile Sweeper 2-axle Winch Truck

GROUP 5: Off-road Dump Truck 35 tons and over, 7-axles or more, Transit Mix Trucks 8 yd and over, A-Frame Truck, Swedish Cranes

GROUP 6: Off-Road Special Equipment (including but not limited to Water Pull Tankers, Athey Wagons, DJB, B70 Wuclids or like Equipment)
GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.
Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

----------------------------------------------------------------

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

================================================================
END OF GENERAL DECISION
Housing and Urban Development (HUD) Form 4010
Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part
of the wages of any laborer or mechanic the amount of any
costs reasonably anticipated in providing bona fide fringe
benefits under a plan or program. Provided, That the
Secretary of Labor has found, upon the written request of
the contractor, that the applicable standards of the Davis-
Bacon Act have been met. The Secretary of Labor may
require the contractor to set aside in a separate account
assets for the meeting of obligations under the plan or
program. (Approved by the Office of Management and
Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own
action or upon written request of an authorized
representative of the Department of Labor withhold or
cause to be withheld from the contractor under this
contract or any other Federal contract with the same prime
contractor, or any other Federally-assisted contract
subject to Davis-Bacon prevailing wage requirements,
which is held by the same prime contractor so much of the
accurated payments or advances as may be considered
necessary to pay laborers and mechanics, including
apprentices, trainees and helpers, employed by the
contractor or any subcontractor the full amount of wages
required by the contract in the event of failure to pay any
laborer or mechanic, including any apprentice, trainee or
helper, employed or working on the site of the work, all or
part of the wages required by the contract, HUD or its
designee may, after written notice to the contractor,
sponsor, applicant, or owner, take such action as may be
necessary to cause the suspension of any further
payment, advance, or guarantee of funds until such
violations have ceased. HUD or its designee may, after
written notice to the contractor, disburse such amounts
withheld for and on account of the contractor or
subcontractor to the respective employees to whom they
are due. The Comptroller General shall make such
disbursements in the case of direct Davis-Bacon Act
contracts.

3. (i) Payrolls and basic records. Payrolls and basic
records relating thereto shall be maintained by the
contractor during the course of the work preserved for a
period of three years thereafter for all laborers and
mechanics working at the site of the work. Such records
shall contain the name, address, and social security
number of each such worker, his or her correct
classification, hourly rates of wages paid (including rates
of contributions or costs anticipated for bona fide fringe
benefits or cash equivalents thereof of the types described
in Section I(b)(2)(B) of the Davis-bacon Act), daily and
weekly number of hours worked, deductions made and
actual wages paid. Whenever the Secretary of Labor has
found under 29 CFR 5.5 (a)(1)(iv) that the wages of any
laborer or mechanic include the amount of any costs
reasonably anticipated in providing benefits under a plan
or program described in Section I(b)(2)(B) of the Davis-
Bacon Act, the contractor shall maintain records which
show that the commitment to provide such benefits is
enforceable, that the plan or program is financially
responsible, and that the plan or program has been
communicated in writing to the laborers or mechanics
affected, and records which show the costs anticipated or
the actual cost incurred in providing such benefits.
Contractors employing apprentices or trainees under
approved programs shall maintain written evidence of the
registration of apprenticeship programs and certification of
trainee programs, the registration of the apprentices
and trainees, and the ratios and wage rates prescribed in
the applicable programs. (Approved by the Office of
Management and Budget under OMB Control Numbers
1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week
in which any contract work is performed a copy of all
payrolls to HUD or its designee if the agency is a party to
the contract, but if the agency is not such a party, the
contractor will submit the payrolls to the applicant
sponsor, or owner, as the case may be, for transmission to
HUD or its designee. The payrolls submitted shall set out
accurately and completely all of the information required
to be maintained under 29 CFR 5.5(a)(3)(i) except that full
social security numbers and home addresses shall not be
included on weekly transmittals. Instead the payrolls shall
only need to include an individually identifying number for
each employee (e.g., the last four digits of the employee’s
social security number). The required weekly payroll
information may be submitted in any form desired.
Optional Form WH-347 is available for this purpose from
the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm
or its successor site. The prime contractor is responsible for
the submission of copies of payrolls by all subcontractors.
Contractors and subcontractors shall maintain the full
social security number and current address of each
covered worker, and shall provide them upon request to
HUD or its designee if the agency is a party to the
contract, but if the agency is not such a party, the
contractor will submit the payrolls to the applicant
sponsor, or owner, as the case may be, for transmission to
HUD or its designee, the contractor, or the Wage and Hour
Division of the Department of Labor for purposes of an
investigation or audit of compliance with prevailing wage
requirements. It is not a violation of this subparagraph for
a prime contractor to require a subcontractor to provide
addresses and social security numbers to the prime
contractor for its own records, without weekly submission
to HUD or its designee. (Approved by the Office of
Management and Budget under OMB Control Number
1215-0149.)

(b) Each payroll submitted shall be accompanied by a
“Statement of Compliance,” signed by the contractor or
subcontractor or his or her agent who pays or supervises
the payment of the persons employed under the contract
and shall certify the following:

(1) That the payroll for the payroll period contains the
information required to be provided under 29 CFR 5.5
(a)(3)(i), the appropriate information is being maintained
under 29 CFR 5.5(a)(3)(i), and that such information is
correct and complete;
(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by
the Employment and Training Administration shall be paid
not less than the applicable wage rate on the wage
determination for the work actually performed. In addition,
any trainee performing work on the job site in excess of
the ratio permitted under the registered program shall be
paid not less than the applicable wage rate on the wage
determination for the work actually performed. In the
event the Employment and Training Administration
withdraws approval of a training program, the contractor
will no longer be permitted to utilize trainees at less than
the applicable predetermined rate for the work performed
until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of
apprentices, trainees and journeymen under 29 CFR Part 5
shall be in conformity with the equal employment
opportunity requirements of Executive Order 11246, as

5. Compliance with Copeland Act requirements. The
contractor shall comply with the requirements of 29 CFR
Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will
insert in any subcontracts the clauses contained in
subparagraphs 1 through 11 in this paragraph A and such
other clauses as HUD or its designee may by appropriate
instructions require, and a copy of the applicable
prevailing wage decision, and also a clause requiring the
subcontractors to include these clauses in any lower tier
subcontracts. The prime contractor shall be responsible
for the compliance by any subcontractor or lower tier
subcontractor with all the contract clauses in this
paragraph.

7. Contract termination; debarment. A breach of the
contract clauses in 29 CFR 5.5 may be grounds for
termination of the contract and for debarment as a
contractor and a subcontractor as provided in 29 CFR
5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.
All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are
herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes
arising out of the labor standards provisions of this
contract shall not be subject to the general disputes
clause of this contract. Such disputes shall be resolved in
accordance with the procedures of the Department of
Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes
within the meaning of this clause include disputes between
the contractor (or any of its subcontractors) and HUD or
its designee, the U.S. Department of Labor, or the
employees or their representatives.

10. (i) Certification of Eligibility. By entering into this
contract the contractor certifies that neither it (nor he or
she) nor any person or firm who has an interest in the
contractor’s firm is a person or firm ineligible to be
awarded Government contracts by virtue of Section 3(a) of
the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be
awarded HUD contracts or participate in HUD programs
pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any
person or firm ineligible for award of a Government
contract by virtue of Section 3(a) of the Davis-Bacon Act
or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed
in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally,
U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C.,
“Federal Housing Administration transactions", provides in
part: “Whoever, for the purpose of . . . influencing in any
way the action of such Administration..... makes, utters or
publishes any statement knowing the same to be false.....
shall be fined not more than $5,000 or imprisoned not
more than two years, or both.”

11. Complaints, Proceedings, or Testimony by
Employees. No laborer or mechanic to whom the wage,
salary, or other labor standards provisions of this Contract
are applicable shall be discharged or in any other manner
discriminated against by the Contractor or any
subcontractor because such employee has filed any
complaint or instituted or caused to be instituted any
proceeding or has testified or is about to testify in any
proceeding under or relating to the labor standards
applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The
provisions of this paragraph B are applicable where the amount of the
prime contract exceeds $100,000. As used in this paragraph, the
terms “laborers” and “mechanics” include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor
contracting for any part of the contract work which may require or
involve the employment of laborers or mechanics shall require or
permit any such laborer or mechanic in any workweek in which the
individual is employed on such work to work in excess of 40 hours in
such workweek unless such laborer or mechanic receives
compensation at a rate not less than one and one-half times the basic
rate of pay for all hours worked in excess of 40 hours in such
workweek.

(2) Violation; liability for unpaid wages; liquidated
damages. In the event of any violation of the clause set
forth in subparagraph (1) of this paragraph, the contractor
and any subcontractor responsible therefor shall be liable
for the unpaid wages. In addition, such contractor and
subcontractor shall be liable to the United States (in the
case of work done under contract for the District of
Columbia or a territory, to such District or to such
territory), for liquidated damages. Such liquidated
damages shall be computed with respect to each individual
laborer or mechanic, including watchmen and guards,
employed in violation of the clause set forth in
subparagraph (1) of this paragraph, in the sum of $10 for each
calendar day on which such individual was required or permitted to
work in excess of the standard workweek of 40 hours without payment
of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.
(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. **Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.
BID SECURITY FORM FOR BOND

KNOW ALL MEN BY THESE PRESENTS

That we ____________________________ as Principal, and ____________________________ as surety, are held and firmly bound unto the Jacobs Center for Neighborhood Innovation hereinafter called the "Owner" in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID submitted by said Principal to the Jacobs Center for Neighborhood Innovation for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

In no case shall the liability of the surety hereunder exceed the sum of $____________________

THE CONDITION OF THIS OBLIGATION IS SUCH,

That whereas the Principal has submitted the above-mentioned bid to the Owner for certain construction specifically described as follows, for which bids are to be opened on the _________ day of _______________, 2018, for

NOW, THEREFORE, IF the aforesaid principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, with sixty (60) days after said opening, and shall within the period specified therefore, or, if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Owner in the prescribed form, in accordance with the bid as accepted, and file the two bonds with the Owner, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the Owner and judgment is recovered, the surety shall pay all costs incurred by the Owner in such suit, including a reasonable attorney's fee to be fixed by the Court.

The Surety and Principal agree that any copy of this bond shall have the same force and effect as the original.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _________day of____________________, 2018.

_________________________________ (SEAL)  _____________________________ (SEAL)
_________________________________ (SEAL)  _____________________________ (SEAL)
Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ____________________

On ____________________, 20___, before me, ______________________________, Notary Public, personally appeared ______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

<table>
<thead>
<tr>
<th>CAPACITY CLAIMED BY SIGNER</th>
<th>DESCRIPTION OF ATTACHED DOCUMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Individual</td>
<td>☐ Partner(s)</td>
</tr>
<tr>
<td>☐ Corporate Officer</td>
<td>☐ Limited</td>
</tr>
<tr>
<td></td>
<td>☐ General</td>
</tr>
<tr>
<td></td>
<td>☐ Attorney-In-Fact</td>
</tr>
<tr>
<td></td>
<td>☐ Trustee(s)</td>
</tr>
<tr>
<td></td>
<td>☐ Guardian/Conservator</td>
</tr>
<tr>
<td></td>
<td>☐ Other:</td>
</tr>
</tbody>
</table>

Name Of Person(s) Or Entity(ies)

____________________

Signer(s) Other Than Named Above

Note: Signature of person executing for Surety must be notarized and evidence of corporate authority attached.
NON-COLLUSION AFFIDAVIT

The undersigned declares:

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation.

The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or a sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder.

All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder and has full knowledge of whether any acts of collusion occurred or did not occur.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

__________________________
Date

By: ____________________________________________
Signature of Corporate Officer or Owner

__________________________
Print name and title

__________________________
Name of Company
VERIFICATION AND EXECUTION

By signing and submitting this Verification and Execution form, the bidder certifies and declares under penalty of perjury under the laws of the State of California that all the information contained in all bid documents is true and correct and that any deviations, errors and omissions may subject the bid to a determination as non-responsive. Further, the bidder agrees to defend by legal counsel of the Owner’s choosing, and to indemnify and hold harmless the Jacobs Center for Neighborhood Innovation against all legal challenges to this bidder’s bid.

________________________________________
Official Company Name

________________________________________
DBA, if any

________________________________________
Data Universal Number System (DUNS) Number

________________________________________
Confirmation of registration in SAM.gov

________________________________________
Signature of Corporate Officer, or Partner, or Owner

________________________________________
Print name and title

________________________________________
Signature of second Corporate Officer (required for corporations)

________________________________________
Print name and title

________________________________________
Date

Failure to fully execute this document will render the bid non-responsive.
CERTIFICATE REGARDING CONTRACTOR’S LICENSE

1. Contractor is required to possess one of the following State Contractor’s License:
   State of California Class “A” Contractor’s License

2. A failure to possess the required license, a failure to truthfully set forth the following information, or a failure to execute this Certificate renders the proposal nonresponsive and requires the City to reject the proposal. (Business and Professions Code Section 7028.15)

3. Contractor declares, under penalty of perjury, that he possesses the required Contractor's license(s) which:
   a. Bears the license number(s): ______________________________
   b. Expires on: ______________________________
   c. Official Company Name: ______________________________

This required license determination has been made by the Owner. Any Contractor holding a different license who feels he is qualified to bid on this work must so advise the owner at least seven (7) days prior to the bid opening. A review of the contemplated work will be made and the Owner's decision as to the required license will be final.
DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of the Subletting and Subcontracting Fair Practices Act (Section 4100 et seq of the Government Code of the State of California) the Bidder has set forth below the full name and the location of the place of business of each Subcontractor who will perform work or labor or render service to the Prime Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications to which the attached bid is responsive, and the portion of the work which will be done by each Subcontractor for each subcontract in excess of one-half of one percent of the Prime Contractor's total bid.

The Bidder understands that if he fails to specify a subcontractor for any portion of the work to be performed under the contract exceeding one-half of one percent of his bid, he shall be deemed to have agreed to perform such portion of the work with contractor’s own forces. Substitution shall not be allowed, except in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record of the City, setting forth the facts constituting the emergency or necessity. If no subcontractors are to be employed on the project, enter the word "NONE".

Use an additional sheet and attach if necessary. Number of sheets attached for listed subcontractors ___

Percentage (%) of total contract amount that is subcontracted ________%  
(Do not include specialty items in the calculation.)
PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to the California Labor Code, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See [http://www.dir.ca.gov/Public-Works/PublicWorks.html](http://www.dir.ca.gov/Public-Works/PublicWorks.html) for additional information.

No bid will be accepted, or any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

By submitting this form, the Bidder hereby certifies that he/she is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Bidder or Subcontractor: __________________________

Bidder or Subcontractor DIR Registration Number:__________

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.

2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contracts with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.

3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

**A COPY OF THIS FORM MUST BE SUBMITTED FOR THE PRIME CONTRACTOR AND ALL SUBCONTRACTORS**
CONTRACTOR'S CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

Section 3700 of the Labor Code provides in part as follows:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation to one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. I further certify that if I should contract or subcontract with any person, including firm or company, to do all or any part of the work for which this proposal covers, I shall assure compliance by that contractor or subcontractor with the provisions of Section 3700 of the Labor Code.

(In accordance with Article 5, commencing at Section 1860, Chapter 1, Part 7, Division 2, of the Labor Code, the above certificate must be signed and filed with the awarding body with proof of insurance, or self-insurance prior to performing any work under this contract.)

Signature of Prime Contractor Date Signature of Prime Contractor Date

Print name and title Print name and title

(If the Prime Contractor is a corporation two signatures of corporate officers are required.)
INFORMATION REQUIRED OF BIDDERS

Failure to complete all information may render your bid non-responsive. (Indicate not applicable “N/A” where appropriate.)

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

Name of Bidder: ______________________________________________________

Type, if Entity: ______________________________________________________

Bidder Address: ______________________________________________________

____________________________________________________________________

Facsimile Number Telephone Number E-Mail ____________________________

How many years has Bidder’s organization been in business as a Contractor?

____________________________________________________________________

How many years has Bidder’s organization been in business under its present name?

____________________________________________________________________

Under what other or former names has Bidder’s organization operated?

____________________________________________________________________

If Bidder’s organization is a corporation, answer the following:

Date of Incorporation: _________________________________________________

State of Incorporation: _______________________________________________

President’s Name: ____________________________________________________

Vice-President’s Name(s): _____________________________________________

Secretary’s Name: ____________________________________________________

Treasurer’s Name: ____________________________________________________
If an individual or a partnership, answer the following:

Date of Organization: __________________________________________________________

Name and address of all partners (state whether general or limited partnership):

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

If other than a corporation or partnership, describe organization and name principals:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

List other states in which Bidder’s organization is legally qualified to do business:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

What type of work does the Bidder normally perform with its own forces?

__________________________________________________________________________

__________________________________________________________________________

Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

__________________________________________________________________________

__________________________________________________________________________

Within the last five years, has any officer or partner of Bidder’s organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

__________________________________________________________________________

__________________________________________________________________________
List Trade References:

________________________________________

________________________________________

________________________________________

List Bank References (Bank and Branch Address):

________________________________________

________________________________________

________________________________________

Name of Bonding Company and Name and Address of Agent:

________________________________________

________________________________________

________________________________________
EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

**Personnel:**

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

List each person’s job title, name and percent of time to be allocated to this project:

________________________________________________________________________________________

________________________________________________________________________________________

Summarize each person’s specialized education:

________________________________________________________________________________________

________________________________________________________________________________________

List each person’s years of construction experience relevant to the project:

________________________________________________________________________________________

________________________________________________________________________________________

Summarize such experience:

________________________________________________________________________________________

________________________________________________________________________________________

Bidder agrees that personnel named in this Bid will remain on this project in their designated capacities until completion of all relevant Work, unless replaced by personnel of equivalent experience and qualifications approved in advance by the Agency.
Additional Bidder’s Statements:

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________
BIDDER’S REFERENCE LIST OF COMPLETED PROJECTS

Attach to this bid a list of all similar projects completed by the Bidder in the last five (5) years. Bidder must have completed at least three (3) similar projects in the past five (5) years on which the Bidder and his subcontractor(s) have successfully constructed and completed projects with the same type (elements), size and complexity of work. The Owner will make the final determination as to whether the projects listed here are of the same type, size and complexity as this project.

Failure of Bidder to supply sufficient documentation of similar experience shall be considered grounds for finding the bid non-responsive.

Project Name: _____________________________________________________________
Contract Price: ___________________________ Date of Completion: _________________
Name, Address, and Telephone Number of Client/Owner’s Representative:
________________________________________________________________________
________________________________________________________________________
Scope of the Project: __________________________________________________________

Project Name: _____________________________________________________________
Contract Price: ___________________________ Date of Completion: _________________
Name, Address, and Telephone Number of Client/Owner’s Representative:
________________________________________________________________________
________________________________________________________________________
Scope of the Project: __________________________________________________________

Project Name: _____________________________________________________________
Contract Price: ___________________________ Date of Completion: _________________
Name, Address, and Telephone Number of Client/Owner’s Representative:
________________________________________________________________________
________________________________________________________________________
Scope of the Project: __________________________________________________________

(Attach additional pages as necessary)
BIDDER’S CURRENT PROJECTS

Bidder shall list all current projects:

Project Name: ________________________________
Contract Price: ________________________________ Estimated Time of Completion: ________
Name, Address, and Telephone Number of Client/Owner’s Representative:

________________________________________________________________________________
________________________________________________________________________________
Scope of the Project: ________________________________

________________________________________________________________________________

Project Name: ________________________________
Contract Price: ________________________________ Estimated Time of Completion: ________
Name, Address, and Telephone Number of Client/Owner’s Representative:

________________________________________________________________________________
________________________________________________________________________________
Scope of the Project: ________________________________

________________________________________________________________________________

Project Name: ________________________________
Contract Price: ________________________________ Estimated Time of Completion: ________
Name, Address, and Telephone Number of Client/Owner’s Representative:

________________________________________________________________________________
________________________________________________________________________________
Scope of the Project: ________________________________

________________________________________________________________________________

(Attach additional pages as necessary)
<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>UNIT PRICE</th>
<th>EXTENSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization (60% of total) and Demobilization (40% of total)</td>
<td>LS</td>
<td>1</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Total of all other costs per a Schedule of Values that must be attached to this Bid Sheet</td>
<td>LS</td>
<td>1</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL BASE BID** $ -

**Bid Alternates**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>UNIT PRICE</th>
<th>EXTENSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternate #1 - Deduction for 1-hour rated drywall instead of the rated glass assembly in the stairwell</td>
<td>LS</td>
<td>1</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL BID ALTERNATES** $ -

**TOTAL BID WITH ALL ALTERNATES** $ -

A complete Schedule of Values must be attached to this Bid Sheet