

City of San Diego

CONTRACTOR'S NAME: Exbon Development, Inc
ADDRESS: 13831 Newhope St., Garden Grove, CA 92843
TELEPHONE NO.: 714-539-2222 **FAX NO.:** _____
CITY CONTACT: Rosa Riego, Senior Contract Specialist, Email: RRiego@sandiego.gov
Phone No. (619) 533-3426
R. Rashidian / R. Escobar / Y. Kawai

BIDDING DOCUMENTS



FOR

JOB ORDER CONTRACT (JOC) BUILDING (NORTH)

BID NO.: K-25-2388-JOC-3-N
SAP NO. (WBS/IO/CC): 11004079
CLIENT DEPARTMENT: 2112
COUNCIL DISTRICT: CITYWIDE
PROJECT TYPE: BE, BF, BH

THIS CONTRACT WILL BE SUBJECT TO THE FOLLOWING:

- PROJECT LABOR AGREEMENT
- THE CITY'S SUBCONTRACTING PARTICIPATION REQUIREMENTS FOR SLBE PROGRAM.
- PREVAILING WAGE REQUIREMENTS: STATE FEDERAL
- ELIGIBLE FOR JOINT VENTURE PREQUALIFICATION STATUS (see Instructions to Bidders)
- APPRENTICESHIP
- ADDITIONAL FUNDING SOURCE REQUIREMENTS AS SPECIFIED IN EACH TASK FOR JOC CONTRACT

BID DUE DATE:

2:00 PM
JULY 10, 2025

CITY OF SAN DIEGO'S ELECTRONIC BIDDING SITE, PLANETBIDS

<http://www.sandiego.gov/cip/bidopps/>

DEPUTY CITY ENGINEER

The engineering Specifications and Special Provisions contained herein have been prepared by or under the direction of the following Registered Engineer:



For City Engineer

06/05/2025

Date

Seal:



TABLE OF CONTENTS

SECTION	PAGE
1. NOTICE INVITING BIDS	4
2. INSTRUCTIONS TO BIDDERS.....	8
3. ATTACHMENTS:	
A. SCOPE OF WORK.....	23
B. RESERVED.....	25
C. EQUAL OPPORTUNITY CONTRACTIN PROGRAM (EOCP).....	26
D. PREVAILING WAGE.....	46
E. SUPPLEMENTARY SPECIAL PROVISIONS.....	51
For JOC projects, technicals and/or appendices will be included with the Task Order Documents	
F. RESERVED.....	69
G. IN-USE OFF-ROAD DIESEL FUELED FLEET REGULATION (OFF-ROAD REGULATION) COMPLIANCE (CARB).....	70
H. CONTRACT AGREEMENT	74
I. PROJECT LABOR AGREEMENT (PLA).....	77
4. CERTIFICATIONS AND FORMS	139
5. ADDITIONAL FUNDING AGENCY PROVISIONS (FOR REFERENCE ONLY) AND FEDERAL SUBCONTRACTING REQUIREMENTS (FOR REFERENCE ONLY).....	153

NOTICE INVITING BIDS

1. **SUMMARY OF WORK:** This is the City of San Diego's (City) solicitation process to acquire Construction services for **JOC BUILDING**. For additional information refer to Attachment A.
2. **FULL AND OPEN COMPETITION:** This Contract is open to full competition and may be bid on by Contractors who are on the City's current Prequalified Contractors' List. For information regarding the Contractors Prequalified list visit the City's web site: <http://www.sandiego.gov>.
3. **ESTIMATED CONSTRUCTION COST:** The City's estimated construction cost for this project is **\$60,000,000.00**. The estimated construction cost for South of U.S. Interstate Route 8 (I-8) is **\$30,000,000.00** and the estimated construction cost for North of U.S. Interstate Route 8 (I-8) is **\$30,000,000.00**.
4. **TWO SEPARATE CONTRACTS:** The City intends to award two (2) separate Contracts for JOC BUILDING to two (2) different Contractors resulting from this solicitation. Each of the two Contracts will cover distinct geographical locations as follows:
 - 4.1. Contract 1 will be for JOC BUILDING South of I-8.
 - 4.2. Contract 2 will be for JOC BUILDING North of I-8.
5. **EACH CONTRACTOR AS A BACK-UP:** Upon direction from the City, each Contractor may act as a backup to the other in the event that a Contractor is unable to perform the quantity of work issued by the City pursuant the Contract.
 - 5.1. Assignment of Contract Work to a back-up Contractor will be at the sole discretion of the City. This is not an opportunity for a Contractor to opt-out of a Task. However, in the event that the Contractor is unable to perform a Task, the Contractor shall notify the City and provide sufficient justification as to the reason(s) it cannot perform the Task. Justification shall be submitted to the City promptly after the Task is issued to the Contractor, but no later than ten (10) Days after issuance. The City will review the justification and make a final determination within ten (10) days. If the City does not agree to the justification, liquidated damages may be assessed as per the WHITEBOOK; or the Contractor may be found in breach of Contract and defaulted.
 - 5.2. The Contractor acting as the back-up shall then perform that Task Order using the quoted prices from its own Contract. The back-up Contractor may decline to accept the Task Order by notifying the City and providing sufficient justification as to the reasons it cannot perform the Task. Justification shall be submitted to the City promptly after the Task is issued to the Contractor but no later than ten (10) Days after issuance.
6. **BID DUE DATE AND TIME ARE: JULY 10, 2025, at 2:00 PM.**
7. **PREVAILING WAGE RATES APPLY TO THIS CONTRACT:** Refer to Attachment D. For the purpose of determining which prevailing wage determination to be used on each Task Order, use the date of the Request for Cost Proposal/Task Order issued by the City. Task Orders using

State and/or Federal funding may include additional requirements. Refer to the Request for Cost Proposal/Task Order issued.

7. LICENSE REQUIREMENT: To be eligible for award of this Contract, Prime Contractor must possess the following licensing classification: **B**

8. PROJECT LABOR AGREEMENT:

8.1. Every Task Order with a City estimated construction value of: (a) at least \$5 million between July 1, 2024 to June 30, 2026; or (b) more than \$1 million beginning July 1, 2026 is covered by a Citywide Project Labor Agreement (PLA) entered into by the City of San Diego, the San Diego Building and Construction Trades Council and signatory Craft Unions, included herein as **Attachment I**. Task Orders meeting this threshold are treated as Covered Projects under the PLA.

This work will provide many opportunities for local residents and local small business enterprises to participate. It is the City's policy that contractors will cooperate with all efforts of the City, the Project Labor Coordinator, the Jobs Coordinator, and other organizations retained by the City to encourage and assist in the participation of Local, Targeted and/or Veteran workers.

8.2. LETTER OF ASSENT. The Contractor and all subcontractors agree to be bound by the PLA by submitting a Letter of Assent (PLA Attachment B) to the City's Project Labor Coordinator. The Contractor shall submit its Letter of Assent as a condition of award of the JOC Contract and all subcontractors shall submit their Letter of Assent before commencing any Work on Each Task Order that is considered a Covered Project.

9.3. PRE-JOB CONFERENCE. Each contractor, regardless of tier, is required to conduct a pre-job conference with the Unions not later than ten (10) calendar days prior to commencing work on any Task Order that is considered a Covered Project.

The Prime Contractor is responsible for facilitating and scheduling their own pre-job conferences for each Task Order that is considered a Covered Project and for facilitating, scheduling, and ensuring that all its subcontractors conduct a pre-job conference.

9.4. JOBS COORDINATOR. For each Task Order that is considered a Covered Project, the Contractor will be required to hire a Jobs Coordinator, an independent third-party individual, entity or employee with whom the Prime Contractor enters into a contract or employs to assist the Contractor with achieving and exceeding the Local Worker goals set forth in the PLA, Article 4, Section 4.5, to assist with fulfilling the Work Opportunities Program as set forth in Article 22, and to assist with Helmets to Hardhats participation as set forth in Article 23.

Each subcontractor, regardless of tier, shall utilize the Jobs Coordinator retained by the Prime Contractor, pursuant to the PLA, Article 22 Section 22.2 (f). The Contractor shall submit a Jobs Coordinator Designation Form each time it is assigned a Task Order that is considered a Covered Project.

10. MANDATORY PRE-BID MEETING:

10.1. ONLINE PRE-BID MEETING:

Prospective Bidders **Must** attend the Pre-Bid Meeting.

The Pre-Bid Meeting will be held on **Thursday, June 26, 2025**, at **10:00 AM** (PDT) at:

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 259 692 791 712 6

Passcode: 5mj9gK6u

Dial in by phone

[+1 945-468-5511,,521818654#](#) United States, Dallas

[Find a local number](#)

Phone conference ID: 521 818 654#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

Please Note: You will need to join the meeting with a computer, tablet or smartphone with the **Microsoft Teams** in order to sign in via the Chat feature as attendance at the meeting will be evidenced by the Chat sign-in. The Chat feature will also be used for attendees to ask any questions.

The purpose of the meeting is to discuss the scope of the Project, submittal requirements, and any Equal Opportunity Contracting Program requirements and reporting procedures.

Upon entering the meeting, all attendees must use the chat feature to sign in with the following information: Name of firm, Attendee's name, Phone number and Email address.

11. AWARD PROCESS:

11.1. This Job Order Contract (JOC) is an Indefinite Delivery/Indefinite Quantity agreement. The Contractor agrees to perform all work assigned via Task Orders. The amount of work and number of Task Orders to be issued are not yet known.

11.2. Separate Contracts will be awarded to the two lowest responsive and responsible Bidders. There will be one Contract awarded for the area South of I-8 and one for area North of I-8. No single Contractor may be awarded the Contracts for JOC BUILDING for both South of I-8 and North of I-8.

11.3. The award for the South of I8 portion will be made to the apparent low bidder. The award for the North of I8 portion will be made to the second apparent low bidder.

11.4. In the event of a tie on either the South of I8 or the North of I8 portions, the City will determine the selected Contractor by a coin-toss or a similar random method.

11.5. The award of these Contracts is contingent upon the Contractors' compliance with all conditions of Award as stated within these documents and within the Notice of Intent to Award.

- 11.6. Upon acceptance of bids and determination of the apparent low bidder, the City will prepare the Contract documents for execution. The City will then award the Contract upon receipt of properly signed Contract Documents.
- 11.7. The Contracts will be deemed executed and effective only upon the signing of the Contract by the Mayor or his designee and the City Attorney's Office.

12. SUBMISSION OF QUESTIONS:

- 12.1. The Director (or Designee) of the Purchasing & Contracting Department is the officer responsible for opening, examining, and evaluating the competitive Bids submitted to the City for the acquisition, construction and completion of any public improvement except when otherwise set forth in these documents. Any questions related to this solicitation shall be submitted to:

Rosa Riego, Senior Contract Specialist at RRiego@sandiego.gov

- 12.2. Questions or clarifications deemed by the City to be material shall be answered via issuance of an addendum and posted to the City's online bidding service.

- 12.3. Only questions answered by formal written addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect. It is the Bidder's responsibility to be informed of any addenda that have been issued and to include all such information in its Bid.

- 13. **CITY'S RESPONSES AND ADDENDA:** The City, at its option, may respond to any or all questions submitted in writing via the City's eBidding web site in the **form of an Addendum**. No other responses to questions, oral or written shall be of any force or effect with respect to this solicitation. The changes to the Contract Documents through addendum are made effective as though originally issued with the Bid. The Bidders shall acknowledge the receipt of addenda at the time of Bid submission.

- 14. **CITY'S RIGHTS RESERVED:** The City reserves the right to cancel the Notice Inviting Bids at any time, and further reserves the right to reject submitted Bids, without giving any reason for such action, at its sole discretion and without liability. Costs incurred by the Bidder(s) as a result of preparing Bids under the Notice Inviting Bids shall be the sole responsibility of each Bidder. The Notice Inviting Bids creates or imposes no obligation upon the City to enter a Contract.

INSTRUCTIONS TO BIDDERS

1. PREQUALIFICATION OF CONTRACTORS:

- 1.1. Contractors submitting a Bid must be pre-qualified with a Maximum Bidding Capacity of at least half of the Maximum Contract Amount prior to the Bid submittal date. Bids from Contractors who have not been pre-qualified as applicable may be deemed non-responsive and ineligible for award.
- 1.2. If the applicant is a subsidiary of a parent company, the applicant may provide the consolidated audited financial statement of the parent company; provided, however, that the applicant submits a statement signed by a duly authorized representative of the parent company confirming that the parent company will guarantee the performance of any contract awarded to the applicant. The City may also require the parent company to execute a separate agreement with the City to guarantee the subsidiary's performance prior to executing any contract with the subsidiary.
- 1.3. The completed application must be submitted online no later than 2 weeks prior to the Bid Opening.
- 1.4. Contractors must remain prequalified throughout the duration of the JOC and its Task Orders. At no time during an open Task Order shall a Contractor's prequalification expire, or the Contractor may be deemed non-compliant and in breach of Contract.
- 1.5. At no time can the aggregate dollar value of open Task Orders exceed the Contractor's Maximum Bidding Capacity.
- 1.6. If the Contractor is at its Maximum Bidding Capacity with open Task Orders, the Contractor may not be eligible for a new Task Order until they have completed prior Task Order(s), thus reducing the aggregate dollar value of open Tasks by the amount necessary to take on a new Task Order. The Contractor may request that their prequalification limit be re-evaluated during the term of the Contract.
- 1.7. **Joint Venture Bidders Cumulative Maximum Bidding Capacity:** For projects with an engineer's estimate of \$30,000,000 or greater, Joint Ventures submitting Bids may be deemed responsive and eligible for award if the cumulative maximum Bidding capacity of the individual Joint Venture entities is equal to or greater than the total amount proposed.
 - 1.7.1. Each of the entities of the Joint Venture must have been previously prequalified at a minimum of \$15,000,000.
 - 1.7.2. Bids submitted with a total amount proposed of less than \$30,000,000 are not eligible for Cumulative Maximum Bidding Capacity prequalification. To be eligible for award in this scenario, the Joint Venture itself or at least one of the Joint Venture entities must have been prequalified for the total amount proposed.

transferred from client to server. Bids submitted prior to the Bid Due Date and Time are not available for review by anyone other than the submitter which has until the "Bid Due Date and Time" to change, rescind or retrieve its proposal should it desire to do so.

3.5. BIDS MUST BE SUBMITTED BY BID DUE DATE AND TIME. Once the Bid deadline is reached, no further submissions are accepted into the system. Once the Bid Due Date and Time has lapsed, Bidders, proposers, the general public, and City staff are able to immediately see the results online. City staff may then begin reviewing the submissions for responsiveness, EOCB compliance and other issues. The City may require any Bidder to furnish statement of experience, financial responsibility, technical ability, equipment, and references.

3.6. RECAPITULATION OF THE WORK. Bids shall not contain any recapitulation of the Work. Conditional Bids will be rejected as being **non-responsive**. Alternative proposals will not be considered unless called for.

3.7. BIDS MAY BE WITHDRAWN by the Bidder only up to the Bid Due Date and Time.

3.7.1. Important Note: Submission of the electronic Bid into the system may not be instantaneous. Due to the speed and capabilities of the user's internet service provider (ISP), bandwidth, computer hardware and other variables, it may take time for the Bidder's submission to upload and be received by the City's eBidding system. It is the Bidder's sole responsibility to ensure their Bids are received on time by the City's eBidding system. The City of San Diego is not responsible for Bids that do not arrive by the required date and time.

3.8. ACCESSIBILITY AND AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE: To request a copy of this solicitation in an alternative format, contact the Contract Specialist listed on the cover of this solicitation at least five (5) working days prior to the Bid/Proposal due date to ensure availability.

4. ELECTRONIC BID SUBMISSIONS CARRY FULL FORCE AND EFFECT

4.1. The Bidder, by submitting its electronic Bid, acknowledges that doing so carries the same force and full legal effect as a paper submission with a longhand (wet) signature.

4.2. By submitting an electronic Bid, the Bidder certifies that the Bidder has thoroughly examined and understands the entire Contract Documents (which consist of the plans and specifications, drawings, forms, affidavits and the solicitation documents), and that by submitting the eBid as its Bid proposal, the Bidder acknowledges, agrees to and is bound by the entire Contract Documents, including any addenda issued thereto, and incorporated by reference in the Contract Documents.

4.3. The Bidder, by submitting its electronic Bid, agrees to and certifies under penalty of perjury under the laws of the State of California, that the certification, forms and affidavits submitted as part of this Bid are true and correct.

- 4.4.** The Bidder agrees to the construction of the project as described in Attachment A Scope of the City of San Diego, in accordance with the requirements set forth herein for the electronically submitted prices. The Bidder guarantees the Contract Price for a period of 120 Days from the date of bid opening. The duration of the Contract Price guarantee shall be extended by the number of Days required for the City to obtain all items necessary to fulfill all conditions precedent.
- 5. BIDS ARE PUBLIC RECORDS:** Upon receipt by the City, Bids shall become public records subject to public disclosure. It is the responsibility of the respondent to clearly identify any confidential, proprietary, trade secret or otherwise legally privileged information contained within the Bid. General references to sections of the California Public Records Act (PRA) will not suffice. If the Contractor does not provide applicable case law that clearly establishes that the requested information is exempt from the disclosure requirements of the PRA, the City shall be free to release the information when required in accordance with the PRA, pursuant to any other applicable law, or by order of any court or government agency, and the Contractor will hold the City harmless for release of this information.
- 6. CONTRACTOR REGISTRATION AND ELECTRONIC REPORTING SYSTEM:**
- 6.1.** **Prior** to the Award of the Contract or each Task Order, you and your Subcontractors and Suppliers must register with the City's web-based vendor registration and Bid management system. For additional information go to:
<https://www.sandiego.gov/purchasing/Bids-Contracts/vendorreg>
- 6.2.** The City may not award the Contract until registration of all Subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified in the Notice of Intent to Award letter, the City reserves the right to rescind the Notice of Intent Award and to make the award to the next responsive and responsible Bidder/proposer.
- 7. PERFORMANCE AND PAYMENT BONDS**
- 7.1.** Performance and Payment Bonds will be required at time of Task Orders.
- 8. INSURANCE REQUIREMENTS:**
- 8.1.** All certificates of insurance and endorsements required by the Contract are to be provided upon issuance of the City's Notice of Intent to Award letter.
- 8.1.1.** Commercial General Liability Insurance
- 8.1.2.** Commercial Automobile Liability Insurance
- 8.1.3.** Workers' Compensation Insurance and Employers Liability Insurance
- 8.2.** Refer to sections 5-4, "INSURANCE", of the Supplementary Special Provisions (SSP) for the insurance requirements which must be met.

- 8.3. Additional insurance requirements may be required for Tasks and will be identified in the Task Order.
 - 8.3.1. Contractors Pollution Liability Insurance
 - 8.3.2. Contractors Hazardous Transporters Pollution Liability Insurance
 - 8.3.3. Contractors Builders Risk Property Insurance
 - 8.3.4. Railroad Protective Liability Insurance
 - 8.3.5. Architects and Engineers Professional Insurance (Errors and Omissions Insurance)
 - 8.3.6. Workers' Compensation Insurance for Work In, Over, or Alongside Navigable Waters

- 9. **BID PRICE SUBMITTAL:** This solicitation is for an Adjustment Factor type Contract, based on the RSMeans data and provisions as set forth herein.
 - 9.1. The Bidder agrees to perform construction services for the City of San Diego in accordance with these Contract Documents. The Bidder guarantees the Adjustment Factors for a period of 1,095 Days from the date of award of Contract and for any Task Order Modifications executed after the expiration of the Contract that are required to complete a Task Order.
 - 9.2. Contractor shall perform all Work required, necessary, and proper for or incidental to completing the Work called for in each individual Task Order issued under this Job Order Contract using the RSMeans data with the quoted Adjustment Factors.
 - 9.3. Each Bidder shall submit 2 Adjustment Factor, One which shall apply to **Normal Working Hours (NWH)** and one which shall apply to **Other Than Normal Working Hours (OTNWH)**.
 - 9.4. The Contractor shall perform all Work items called for in each Task Order's Scope of Work. Each Work item will be multiplied by the quoted Adjustment Factor for **Normal Working Hours (NWH)** or **Other Than Normal Working Hours (OTNWH)** as follows:
 - 9.4.1. Adjustment Factor #1 (AF1): The first Adjustment Factor will be applied to all Work items that are constructed during **NWH**.
 - 9.4.2. Adjustment Factor #2 (AF2): The second Adjustment Factor will be applied to all Work items that are constructed during **OTNWH**.
 - 9.5. The Adjustment Factors shall be specified to the fourth decimal place (e.g., 1.1234). Failure to express Adjustment Factors to the fourth decimal place will result in the Bid being **non-responsive** and ineligible for further consideration.

- 9.6.** The Bidder with the lowest **Composite Adjustment Factor (CAF)** that meets all of the Bid requirements will be considered the Apparent Low Bidder. The Composite Adjustment Factor will be calculated using the following formula:

$$\text{CAF} = (\text{AF1} \times 0.80) + (\text{AF2} \times 0.20)$$

- 9.7.** The calculation used above is not a forecast of the portions of Normal Working Hour or Other Than Normal Working Hour work that will be assigned to a JOC contract.

- 9.8.** The Bidder's Adjustment Factors shall include allowances for all costs associated with and incidental to either self-performed or subcontracted Work in accordance with "WORK TO BE DONE." Examples of costs included in the Bidder's Adjustment Factors include, but are not limited to:

1. Overhead, profit, bond premiums, insurance, mobilization of any kind to include equipment, all Federal, State and Local taxes, and the cost of doing business in and for the City.
2. Preparation of all required forms, reports, or documents.
3. Attendance at Site, Contract, or Project meetings for all staff whether Contractor, Subcontractor, Supplier, or Truckers.
4. Compliance with laws.
5. Costs to prepare estimates, proposals, submittals, any computer printouts/plots, and Shop Drawings.
6. Purchase and review of Unit Price Books, RSMeans software, or both, code books, The GREENBOOK, The WHITEBOOK, and any other codes or manuals referenced in the Contract Documents.
7. Labor not directly related to construction such as foreman, superintendent, office staff, safety staff, estimation staff, and project management staff.
8. Review Contract and Task Order documents, order materials, and prepare, negotiate, and finalize proposals.
9. Site visits to collect information, daily Site cleanup and protection.
10. Public information or public interface.
11. Other costs not directly related to installation or construction of a Task Order line item.

- 9.9.** No allowance or payment will be made later for any prices other than RSMeans data or Non-Pre-Priced Item unit prices, permit fee, specialty inspection fee, and excusable compensable delays caused by the City.

- 10. ONLY ONE BID PER CONTRACTOR SHALL BE ACCEPTED:** No person, firm, or corporation shall be allowed to make, file, or be interested in more than one (1) Bid for the same work unless alternate Bids are called for. A person, firm or corporation who has submitted a subproposal to a Bidder, or who has quoted prices on materials to a Bidder, is not hereby disqualified from submitting a subproposal or quoting prices to other Bidders or from submitting a Bid on its own behalf. Any Bidder who submits more than one Bid will result in the rejection of all Bids submitted.
- 11. SAN DIEGO BUSINESS TAX CERTIFICATE:** The Contractor and Subcontractors, not already having a City of San Diego Business Tax Certificate for the Work contemplated shall secure the appropriate certificate from the City Treasurer, Civic Center Plaza, first floor and submit to the Contract Specialist upon request or as specified in the Contract Documents. Tax Identification numbers for both the Bidder and the listed Subcontractors must be submitted on the City provided forms within these documents.
- 12. AWARD OF CONTRACT OR REJECTION OF BIDS:**
- 12.1.** This Contract may be awarded to the two lowest responsible and reliable Bidders.
- 12.2.** Bidders shall submit two Adjustment Factors to be their competitive Bid price adjustment to the unit prices published in the RSMeans for Normal Working Hours (NWH) and Other Than Normal Working Hours (ONWH). Incomplete submittals may be rejected as being nonresponsive.
- 12.3.** The City reserves the right to reject any or all Bids, to waive any informality or technicality in Bids received, and to waive any requirements of these specifications as to Bidding procedure.
- 12.4.** Bidders will not be released on account of their errors of judgment. Bidders may be released only upon receipt by the City, within 3 Working days of the Bid opening, written notice from the Bidder which shows proof of honest, credible, clerical error of a material nature, free from fraud or fraudulent intent; and of evidence that reasonable care was observed in the preparation of the Bid.
- 12.5.** A Bidder who is not selected for Contract award may protest the award of a Contract to another Bidder by submitting a written protest in accordance with the San Diego Municipal Code.
- 12.6.** The City of San Diego will not discriminate in the award of Contracts with regard to race, religion, color, national origin, ancestry, physical handicap, marital status, sex or age.
- 12.7.** Each Bid package properly signed as required by these specifications shall constitute a firm offer, which may be accepted by the City within the time specified in the Notice Inviting Bids.
- 12.8.** The City reserves the right to evaluate all Bids and determine the lowest Bidder on the basis of any proposed alternates or options as detailed herein.

- 12.9.** In the event of a tie bid (where two or more bidders have identical Composite Adjustment Factors), the City will determine the winner by virtue of a coin toss or some other arbitrary method. The tie break will be administered by City staff along with a witness and in the presence of the respective bidders. "The tied bidder whose company name comes first alphabetically will call heads or tails for the coin toss."

13. BID RESULTS:

- 13.1.** The availability of the Bid results on the City's eBidding system shall constitute the public announcement of the apparent low Bidder. In the event that the apparent low Bidder is subsequently deemed non-responsive or non-responsible, a notation of such will be made on the eBidding system. The ranking and new Apparent Low Bidder will be adjusted accordingly.
- 13.2.** To obtain Bid results, visit the City's eBidding site, request results via e-mail to the City Contact person listed on the cover page of this document

14. THE CONTRACT:

- 14.1.** The Bidder to whom award is made shall execute a written Contract with the City of San Diego and furnish insurance certificates specified by the City within 14 Days after receipt by Bidder of a form of Contract for execution, unless an extension of time is granted to the Bidder in writing.
- 14.2.** If the Bidder takes longer than 14 Days to fulfill these requirements, then the additional time taken shall be added to the Bid guarantee. The Contract shall be made in the form adopted by the City, which includes the provision that no claim or suit whatsoever shall be made or brought by Contractor against any officer, agent, or employee of the City for or on account of anything done or omitted to be done in connection with this Contract, nor shall any such officer, agent, or employee be liable hereunder.
- 14.3.** If the Bidder to whom the award is made fails to enter into the contract, the City Council may declare by resolution that the bidder is debarred and prohibited from bidding on City procurement and Public Works projects for a period of no less than one year, as provided by San Diego Municipal Code §22.0807 (d) (2).
- 14.4.** Pursuant to the San Diego City Charter section 94, the City may only award a Public Works Contract to the lowest responsible and reliable Bidder. The City will require the Apparent Low Bidder to (i) submit information to determine the Bidder's responsibility and reliability, (ii) execute the Contract in form provided by the City, and (iii) furnish insurance certificates specified by the City within 14 Days, unless otherwise approved by the City, in writing after the Bidder receives notification from the City, designating the Bidder as the Apparent Low Bidder and formally requesting the above mentioned items.
- 14.5.** The award of the Contract is contingent upon the satisfactory completion of the above-mentioned items and becomes effective upon the signing of the Contract by the Mayor

or designee and approval as to form the City Attorney's Office. If the Apparent Low Bidder does not execute the Contract or submit required documents and information, the City may award the Contract to the next lowest responsible and reliable Bidder who shall fulfill every condition precedent to award. A corporation designated as the Apparent Low Bidder shall furnish evidence of its corporate existence and evidence that the officer signing the Contract and bond for the corporation is duly authorized to do so.

- 15. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK:** The Bidder shall examine carefully the Project Site, the Plans and Specifications, the RSMeans data, other materials as described in the Special Provisions, Section 3-9, "TECHNICAL STUDIES AND SUBSURFACE DATA", and the proposal forms (i.e., Bidding Documents). The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of Work, the quantities of materials to be furnished, and as to the requirements of the Bidding Documents and Specifications.
- 16. CITY STANDARD PROVISIONS:** This Contract is subject to the following standard provisions. See The WHITEBOOK for details.

 - 16.1.** The City of San Diego Resolution No. R-277952 adopted on May 20, 1991 for a Drug Free Workplace.
 - 16.2.** The City of San Diego Resolution No. R-282153 adopted on June 14, 1993 related to the Americans with Disabilities Act.
 - 16.3.** The City of San Diego Municipal Code §22.3004 for Pledge of Compliance.
 - 16.4.** The City of San Diego's Labor Compliance Program and the State of California Labor Code §§1771.5(b) and 1776.
 - 16.5.** Sections 1777.5, 1777.6, and 1777.7 of the State of California Labor Code concerning the employment of apprentices by Contractors and subcontractors performing public works Contracts.
 - 16.6.** The City's Equal Benefits Ordinance (EBO), Chapter 2, Article 2, Division 43 of The San Diego Municipal Code (SDMC).
 - 16.7.** The City's Information Security Policy (ISP) as defined in the City's Administrative Regulation 90.63.
- 17. PRE-AWARD ACTIVITIES:**

 - 17.1.** The Contractor selected by the City to execute a Contract for this Work shall submit the required documentation as specified herein and in the Notice of Intent to Award. Failure to provide the information as specified may result in the Bid being rejected as **non-responsive**.
 - 17.2.** The decision that Bid is non-responsive for failure to provide the information required within the time specified shall be at the sole discretion of the City.

- 18. SUBMITTAL OF “OR EQUAL” ITEMS:** See Section 4-6, “Trade Names or Equals” in The WHITEBOOK and as amended in the SSP.
- 19. SUBCONTRACT LIMITATIONS:** The Bidder’s attention is directed to Standard Specifications for Public Works Construction, Section 3-2, “SELF-PERFORMANCE” in The GREENBOOK and as amended in the SSP which requires the Contractor to self-perform not less than the specified amount per each Task Order.
- 20. REFERENCE STANDARDS:** Except as otherwise noted or specified, the Work shall be completed in accordance with the following standards:

Title	Edition	Document Number
Standard Specifications for Public Works Construction (“The GREENBOOK”) http://www.greenbookspecs.org/	2021	ECPI010122-01
City of San Diego Standard Specifications for Public Works Construction (“The WHITEBOOK”)* https://www.sandiego.gov/ecp/edocref/greenbook	2021	ECPI010122-02
City of San Diego Standard Drawings* https://www.sandiego.gov/ecp/edocref/standarddraw	2021	ECPI010122-03
Citywide Computer Aided Design and Drafting (CADD) Standards https://www.sandiego.gov/ecp/edocref/drawings	2018	PWPI010119-04
California Department of Transportation (CALTRANS) Standard Specifications https://dot.ca.gov/programs/design/july-2023-ccs-standard-plans-and-standard-specifications	2023	ECPD092023-05
CALTRANS Standard Plans https://dot.ca.gov/programs/design/july-2023-ccs-standard-plans-and-standard-specifications	2023	ECPD092023-06
California Manual on Uniform Traffic Control Devices Revision 8 (CA MUTCD Rev 8) https://dot.ca.gov/programs/safety-programs/camutcd	2014	ECPD032324-07
<p>NOTE: *Available online under Engineering Documents and References at: https://www.sandiego.gov/ecp/edocref/</p> <p>*Electronic updates to the Standard Drawings may also be found in the link above</p>		

- 21. JOC CONTRACT TERM AND VALUE:** Upon issuance of a contract, the City guarantees the Contractor a minimum value of total Work (Minimum Contract Amount) of **\$5,000** per Contract, up to a potential maximum value of total Work (Maximum Contract Amount) of **\$30,000,000 per Contract**. The term of the Contract is 36 months for the issuance of Task Orders or the expenditure of the **\$30,000,000 per Contract** maximum contract amount, whichever occurs first. All work pursuant to any Task Order issued shall be completed within the time frame specified on the Task Order Notice to Proceed. The total time for the issuance of Tasks **and** completion of the associated Work shall not exceed five (5) years.

22. TASK ORDERS:

- 22.1.** As the need for Work arises, the City will assign Task Orders by sending to the JOC contractor a Task Order Scope of Work. A Scop Meeting to take place on-site between the City and the JOC Contractor will be scheduled.
- 22.2.** The JOC Contractor must accept and complete **ALL** Task Orders assigned to them by the City. JOC Contractors may not opt-out or decline to accept a Task Order. JOC Contractors who decline to accept a Task Order may be considered in breach of this Contract and may be defaulted.
- 22.3.** JOC Contracts are indefinite in quantity and scope at the time of Bid. Task Orders will be assigned or issued as the need arises for the Work. The Work items in the RSMeans with pre-established pricing are called Pre-Priced Items. Task Orders may also include Non-Pre-Priced Items that are not included in the RSMeans. The Contractor will be required to obtain at least 2 competitive quotes from outside sources for all Non-Pre-Priced Items.

23. TASK ORDER PROPOSAL:

- 23.1.** The JOC Contractor shall, as requested by the City, prepare a cost proposal, reports, or both in electronic format or as directed by the City. The JOC Contractor shall submit that proposal to the Contract Specialist within the time frame established in the Task Order Request for Proposal.
- 23.2.** Task Order proposals are calculated by selecting applicable Pre-Priced Items in the RSMeans and/or Non-Pre-Priced Items and multiplying the prices by the appropriate quantities and Adjustment Factors in effect as of the date of the Task Order.
 - 23.2.1.** Pre-Priced items: Items priced in the RSMeans.
 - 23.2.2.** Non-Pre-priced items: Items not in the RSMeans, obtained by using the lowest of the competitive quotes received. At least two competitive quotes must be received. The competitive quotes will include labor, material, equipment, and services to install startup and test the item.
- 23.3.** The sum of the appropriate Pre-priced and Non-Pre-priced Items multiplied by the appropriate quantities and applicable Adjustment Factor will establish a firm, fixed price for the Task Order. The Contractor will be required to apply the appropriate and actual line items and quantities required in the Task Order Scope of Work.
- 23.4.** Upon receipt of the Contractor's estimate or cost proposal, the City will compare it to the City's estimate of costs for the Scope of Work. If the JOC Contractor's cost proposal is deemed acceptable, the City may release the Task Order by issuing an NTP at the agreed-upon price.

23.5. If the City does not accept the cost proposal, the City and the Contractor may negotiate the proposal until an agreement is reached.

23.6. The JOC contractor will be required to meet all deadlines and timelines established in the Task Order documents.

23.7. RSMEANS:

23.7.1. PRICE ADJUSTMENT: The Adjustment Factors shall not change for a period of 3 years (1,095 Calendar Days) from the Contract Award Date and for any Task Order Modifications executed after the expiration of the Contract that are required to complete a Task Order. Once a particular Task Order has been approved and issued to the Contractor for performance there will not be any price adjustments considered for the completion of the Task Order. A Task Order is approved and issued when the Task Order Authorization is fully executed.

23.7.2. The Contractor shall subscribe to the RSMeans library and shall use the estimating software to submit the Unit Detail Report and Unit Summary Report through the RSMeans system. For bidding purposes, the contractor may access the online library on a limited basis by accessing the following website: www.rsmeansonline.com.

23.7.3. Where possible, the Contractor shall use RSMeans line items that are inclusive of labor, material, and equipment. RSMeans line items that include dollar values for services, labor, material, and equipment are deemed to be inclusive of the services, labor, material and equipment required for completing the construction item. For each Task Order, the Contractor shall apply the appropriate labor rates, line items and quantities based on the scope of work required.

24. TASK ORDER SUBCONTRACTOR INFORMATION:

24.1. LISTING OF SUBCONTRACTORS. In accordance with the requirements provided in the "Subletting and Subcontracting Fair Practices Act" of the California Public Contract Code, the Bidder shall provide the **NAME** and **ADDRESS** of each Subcontractor who will perform Work, labor, render services or who specially fabricates and installs a portion of the Work or improvement, in an amount in excess of 0.5% of the Contractor's total Bid. The Bidder shall also state within the description, whether the Subcontractor is a **CONSTRUCTOR, CONSULTANT** or **SUPPLIER**. The Bidder shall state the **DIR REGISTRATION NUMBER** for all Subcontractors and shall further state within the description, the **PORTION** of the Work which will be performed by each Subcontractor under this Contract. The Contractor shall list only one Subcontractor for each portion of the Work. The **DOLLAR VALUE** of the total Bid to be performed shall be stated for all Subcontractors listed. Failure to comply with this requirement may result in the Bid being rejected as **non-responsive** and ineligible for award. The Bidder's attention is directed to Standard Specifications for Public Works Construction, Section 3-2, "SELF-PERFORMANCE" in The GREENBOOK and as amended in the SSP

which requires the Contractor to self-perform not less than the specified amount per each Task Order. The Bidder shall list all SLBE, ELBE, DBE, DVBE, MBE, WBE, OBE, SDB, WoSB, HUBZone, and SDVOSB Subcontractors for which Bidders are seeking recognition towards achieving any mandatory, voluntary (or both) Subcontracting participation goals.

24.1.1. Additionally, pursuant to California Senate Bill 96 and in accordance with the requirements of Labor Code sections 1771.1 and 1725.5, by submitting a Bid or proposal to the City, Contractor is certifying that he or she has verified that all Subcontractors used on this public work project are registered with the California Department of Industrial Relations (DIR). **The Bidder shall provide the name, address, license number, DIR registration number of any Subcontractor – regardless of tier –** who will perform work, labor, render services or specially fabricate and install a portion [type] of the work or improvement pursuant to the Contract.

24.2. LISTING OF SUPPLIERS. Any Bidder seeking the recognition of Suppliers of equipment, materials, or supplies obtained from third party Suppliers towards achieving any mandatory or voluntary (or both) Subcontracting participation goals shall provide, at a minimum, the **NAME, LOCATION (CITY), DIR REGISTRATION NUMBER** and the **DOLLAR VALUE** of each Supplier. The Bidder will be credited up to 60% of the amount to be paid to the Suppliers for materials and supplies unless vendor manufactures or substantially alters materials and supplies, in which case, 100% will be credited. The Bidder is to indicate within the description whether the listed firm is a Supplier or manufacturer. If no indication is provided, the listed firm will be credited at 60% of the listed dollar value for purposes of calculating the Subcontractor Participation Percentage.

25. SUBCONTRACTING PARTICIPATION PERCENTAGES:

25.1. The City has incorporated a mandatory subcontractor participation percentage to enhance competition and maximize subcontracting opportunities.

25.2. The mandatory subcontracting percentage for each Task Order is **10% for SLBE-ELBE firms**, unless specified otherwise by the Task Order RFP.

25.3. Task Order costs, without Field Order amounts, will be included in the calculation.

25.4. The Contractor shall maintain a participation level at or above the mandatory percentage continuously throughout the term of the contract.

25.5. The Contractor shall submit as requested, during the term of the contract, a subcontractor participation report as required by the City detailing the participation levels for each certification and overall by each Task Order and overall contract.

26. TASK ORDER MODIFICATION: Line items and quantities for unforeseen conditions and changes in the Work may be requested through a Task Order Modification only if it is determined during construction that they are actually required to complete the Task Order.

The City may issue Task Order Modification for scope changes and to claim credit for items not actually installed, completed, or cancelled.

- 27. TASK ORDERS COMMERCIALY FUNDED:** For any tasks that are funded utilizing Commercial Paper (CP), Contractor shall, at their expense, substitute for any money withheld by the City (Retention), and securities equivalent to the amount being withheld. As to any such security or securities so substituted for monies withheld, the Contractor shall be the beneficial owner of same and shall receive any accrued interest. Securities shall, at Contractor's expense, be deposited with the City or with a State or Federally Chartered bank as the escrow agent who shall pay such monies to you upon notification by the Engineer that payment can be made. Such notification shall be given at the expiration of 35 Calendar Days from the date of Acceptance, or as prescribed by law, provided however, that there shall be a continued retention of the necessary securities to cover such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by the Contract to be further retained.
- 28. AVAILABILITY OF PLANS AND SPECIFICATIONS:** Contract Documents may be obtained by visiting the City's website: <http://www.sandiego.gov/cip/>. Plans and Specifications for this Contract are also available for review in the office of the City Clerk or Purchasing & Contracting Department, Public Works Division.

ATTACHMENTS

ATTACHMENT A
SCOPE OF WORK

SCOPE OF WORK

1. **SCOPE OF WORK:** BUILDING IMPROVEMENTS Work will include a variety of detailed repair and construction tasks and specifications that have pre-established unit prices listed in the RSMeans library. The RSMeans library pricing incorporates the use of experienced labor, high quality materials, local activity, climate, and geographic factors. All Work pursuant to this Contract will be performed for the City of San Diego. The Work will involve the repair, modernization and/or construction of public buildings in a JOC Task Order.
 - 1.1. The Contractor shall furnish all management, documentation, design, and incidental drawings (as required), labor, materials, and equipment needed to perform the Work.
 - 1.2. The Work shall be performed in accordance with the JOC Task Order; Scope of Work and other requirements.
2. **LOCATION OF WORK:** To be determined by the Task Order.
3. **CONTRACT TERM:** The Contract Term is three (3) years from the time of JOC Award for the issuance of fully executed Task Order Authorizations. All work pursuant to any Task Order issued shall be completed within the time frame specified on the Task Order Notice to Proceed. The total time for the issuance of Task Orders **and** completion of the associated Work shall not exceed five (5) years from the date of contract execution.

ATTACHMENT B

RESERVED

ATTACHMENT C
EQUAL OPPORTUNITY CONTRACTING PROGRAM

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

SECTION A – GENERAL REQUIREMENTS

A. INTRODUCTION.

1. This document sets forth the following specifications:
 - a) The City's general EOCP requirements for all Construction Contracts.
 - b) Special Provisions for Contracts subject to SLBE and ELBE requirements only.
2. Additional requirements may apply for state or federally funded projects.
3. These requirements shall be included as Contract provisions for all Subcontracts.
4. The City specified forms, instructions, and guides are available for download from the EOCP's web site at: <http://www.sandiego.gov/eoc/forms/index.shtml>

B. GENERAL.

1. The City of San Diego promotes equal employment and subcontracting opportunities.
2. The City is committed to ensuring that taxpayer dollars spent on public Contracts are not paid to businesses that practice discrimination in employment or subcontracting.
3. The City encourages all companies seeking to do business with the City to share this commitment.

C. DEFINITIONS.

1. For the purpose of these requirements: Terms "Bid" and "Proposal", "Bidder" and "Proposer", "Subcontractor" and "Subconsultant", "Contractor" and "Consultant", "Contractor" and "Prime Contractor", "Consultant" and "Professional Service Provider", "Suppliers" and "Vendors", "Suppliers" and "Dealers", and "Suppliers" and "Manufacturers" may have been used interchangeably.
2. The following definitions apply:
 - a) **Emerging Business Enterprise (EBE)** – A for-profit business that is independently owned and operated; that is not a subsidiary or franchise of another business and whose gross annual receipts do not exceed the amount set by the City Manager and that meets all other criteria set forth in regulations implementing Municipal Code Chapter 2, Article 2, Division 36. The City Manager shall review the threshold amount for EBEs on an annual basis and adjust as necessary to reflect changes in the marketplace.
 - b) **Emerging Local Business Enterprise (ELBE)** – A Local Business Enterprise that is also an Emerging Business Enterprise.
 - c) **Minority Business Enterprise (MBE)** – A certified business that is at

least fifty-one percent (51%) owned by one or more minority individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more minorities owners. Minorities include the groups with the following ethnic origins: African, Asian Pacific, Asian Subcontinent, Hispanic, Native Alaskan, Native American, and Native Hawaiian.

- d) **Women Business Enterprise (WBE)** – A certified business that is at least fifty-one percent (51%) owned by a woman or women, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more women; and (2) whose daily business operations are managed and directed by one or more women owners.
- e) **Disadvantaged Business Enterprise (DBE)** – a certified business that is at least fifty-one percent (51%) owned by socially and economically disadvantaged individuals, or, in the case of a publicly owned business at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (2) whose daily business operations are managed and directed by one or more socially and economically disadvantaged owners.
- f) **Disabled Veteran Business Enterprise (DVBE)** – A certified business that is at least fifty-one percent (51%) owned by one or more disabled veterans; and (2) business operations must be managed and controlled by one or more disabled veterans. Disabled Veteran is a veteran of the U.S. military, naval, or air service; the veteran must have a service-connected disability of at least 10% or more; and the veteran must reside in California.
- g) **Other Business Enterprise (OBE)** – Any business which does not otherwise qualify as a Minority, Woman, Disadvantaged, or Disabled Veteran Business Enterprise.
- h) **Small Business Enterprise (SBE)** – A for-profit business that is independently owned and operated; that is not a subsidiary or franchise of another business and whose gross annual receipts do not exceed the amount set by the City Manager and that meets all other criteria set forth in regulations implementing Municipal Code Chapter 2, Article 2, Division 36. The City Manager shall review the threshold amount for SBEs on an annual basis and adjust as necessary to reflect changes in the marketplace. A business certified as a Micro Business (MB) or a Disabled Veteran Business Enterprise (DVBE) by the State of California and that has provided proof of such certification to the City Manager shall be deemed to be an SBE.
- i) **Small Local Business Enterprise (SLBE)** – A Local Business Enterprise that is also a Small Business Enterprise.

D.

CITY'S EQUAL OPPORTUNITY COMMITMENT.

1. Nondiscrimination in Contracting Ordinance.

- a) You, your Subcontractors, and Suppliers shall comply with the requirements of the City's Nondiscrimination in Contracting Ordinance, San Diego Municipal Code §§22.3501 through 22.3517.

You shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. You shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. You understand and agree that the violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions.

You shall include the foregoing clause in all Contracts between you and your Subcontractors and Suppliers.

- b) **Disclosure of Discrimination Complaints.** As part of its Bid or Proposal, you shall provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against you in a legal or administrative proceeding alleging that you discriminated against your employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
- c) Upon the City's request, You agree to provide to the City, within 60 Calendar Days, a truthful and complete list of the names of all Subcontractors and Suppliers that you have used in the past 5 years on any of your Contracts that were undertaken within the San Diego County, including the total dollar amount paid by you for each Subcontract or supply Contract.
- d) You further agree to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code §§22.3501 through 22.3517. You understand and agree that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against you up to and including contract termination, debarment, and other sanctions for the violation of the provisions of the Nondiscrimination in Contracting Ordinance. You further understand and agree that the procedures, remedies, and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of the Ordinance.

E.

EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM.

1. You, your Subcontractors, and Suppliers shall comply with the City's Equal Employment Opportunity Outreach Program, San Diego Municipal Code §§22.2701 through 22.2707.

You shall not discriminate against any employee or applicant for employment on any basis prohibited by law. You shall provide equal opportunity in all employment practices. You shall ensure that your Subcontractors comply with this program. Nothing in this section shall be interpreted to hold you liable for any discriminatory practices of your Subcontractors.

You shall include the foregoing clause in all Contracts between you and your Subcontractors and Suppliers.

2. If the Contract is competitively solicited, the selected Bidder shall submit a Work Force Report (Form BB05) within 10 Working Days after receipt by the Bidder to the City for approval as specified in the Notice of Intent to Award letter.
3. The selected Bidder shall submit an Equal Employment Opportunity Plan if a Work Force Report is submitted and if the City determines that there are under-representations when compared to County Labor Force Availability data.
4. If the selected Bidder submits an Equal Employment Opportunity Plan, it shall include the following assurances:
 - a) You shall maintain a working environment free of discrimination, harassment, intimidation, and coercion at all Sites and in all facilities at which your employees are assigned to Work.
 - b) You shall review your EEO Policy annually with all on-Site supervisors involved in employment decisions.
 - c) You shall disseminate and review your EEO Policy with all employees at least once a year, post the policy statement and EEO posters on all company bulletin boards and job sites, and document every dissemination, review, and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings.
 - d) You shall review, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintain written documentation of these reviews.
 - e) You shall discuss your EEO Policy Statement with Subcontractors with whom you anticipate doing business, including the EEO Policy Statement in your Subcontracts, and provide such documentation to the City upon request.
 - f) You shall document and maintain a record of all Bid solicitations and outreach efforts to and from Subcontractors, contractor associations, and other business associations.
 - g) You shall disseminate your EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit. Maintain files documenting these efforts and provide copies of these advertisements to the City upon request.

- h) You shall disseminate your EEO Policy to union and community organizations.
- i) You shall provide immediate written notification to the City when any union referral process has impeded your efforts to maintain your EEO Policy.
- j) You shall maintain a current list of recruitment sources, including those outreaching to people of color and women, and provide written notification of employment opportunities to these recruitment sources with a record of the organizations' responses.
- k) You shall maintain a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken.
- l) You shall encourage all present employees, including people of color and women employees, to recruit others.
- m) You shall maintain all employment selection process information with records of all tests and other selection criteria.
- n) You shall develop and maintain documentation for on-the-job training opportunities, participate in training programs, or both for all of your employees, including people of color and women, and establish apprenticeship, trainee, and upgrade programs relevant to your employment needs.
- o) You shall conduct, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourage all employees to seek and prepare appropriately for such opportunities.
- p) You shall ensure that the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes.

F. SUBCONTRACTING.

1. The City encourages all eligible business enterprises to participate in City contracts as a Contractor, Subcontractor, and joint venture partner with you, your Subcontractors, or your Suppliers. You are encouraged to take positive steps to diversify and expand your Subcontractor solicitation base and to offer subcontracting opportunities to all eligible business firms including SLBEs, ELBEs, MBEs, WBEs, DBEs, DVBEs, and OBEs.
2. For Subcontractor participation level requirements, see the Contract Documents where applicable.

3. For the purposes of achieving the mandatory Subcontractor participation percentages, City percentage calculations will not account for the following:
 - a) "Field Orders" and "City Contingency" Bid items.
 - b) Alternate Bid items.
 - c) Allowance Bid items designated as "EOC Type II".
4. Allowance Bid items designated as "EOC Type I" will be considered as part of the Base Bid and will be included in the percentage calculation.
5. Each joint venture partner shall be responsible for a clearly defined Scope of Work. In addition, an agreement shall be submitted and signed by all parties identifying the extent to which each joint venture partner shares in ownership, control, management, risk, and profits of the joint venture.

G. LISTS OF SUBCONTRACTORS AND SUPPLIERS.

1. You shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code §§4100 through 4113, inclusive.
2. You shall list all Subcontractors who will receive more than 0.5% of the total Bid amount or \$10,000, whichever is greater on the form provided in the Contract Documents (Subcontractors list).
3. The Subcontractors list shall include the Subcontractor's name, telephone number including area code, physical address, Scope of Work, the dollar amount of the proposed Subcontract, the California contractor license number, the Public Works contractor registration number issued pursuant to Section 1725.5 of the Labor Code, and the Subcontractor's certification status with the name of the certifying agency.
4. The listed Subcontractor shall be appropriately licensed pursuant to Contractor License Laws.

H. SUBCONTRACTOR AND SUPPLIER SUBSTITUTIONS.

1. Listed Subcontractors and Suppliers shall not be substituted without the Express authorization of the City or its duly authorized agent.
2. Request for Subcontractor or Supplier substitution shall be made in writing to Purchasing & Contracting Department, Public Works Division, Attention Contract Specialist, 1200 3rd Ave., Suite 200, MS 56P, San Diego, CA 92101 with a copy to the Engineer.
3. The request shall include a thorough explanation of the reason(s) for the substitution, including dollar amounts and a letter from each substituted Subcontractor or Supplier stating that they (the Subcontractors or Suppliers) release all interest in working on the Project and written confirmation from the new Subcontractor or Supplier stating that they agree to work on the Project along with the dollar value of the Work to be performed.
4. Written approval of the substitution request shall be received by you or from the City or its authorized officer prior to any unlisted Subcontractor or Supplier performing Work on the Project.

5. Substitution of Subcontractors and Suppliers without authorization shall subject you to those penalties set forth in Public Contract Code §4110.
6. Requests for Supplier substitution shall be made in writing at least 10 Days prior to the provision of materials, supplies, or services by the proposed Supplier and shall include proof of written notice to the originally listed Supplier of the proposed substitution.
7. A Contractor whose Bid is accepted shall not:
 - a) Substitute a person as Subcontractor or Supplier in place of the Subcontractor or Supplier listed in the original bid, except that the City, or it's duly authorized officer, may consent to the substitution of another person as a Subcontractor or Supplier in any of the following situations:
 - i. When the Subcontractor or Supplier listed in the Bid, after having a reasonable opportunity to do so, fails or refuses to execute a written Contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of the subcontractor's written bid, is presented to the subcontractor by the prime contractor.
 - ii. When the listed Subcontractor or Supplier becomes insolvent or the subject of an order for relief in bankruptcy.
 - iii. When the listed Subcontractor or Supplier fails or refuses to perform his or her subcontract.
 - iv. When the listed Subcontractor fails or refuses to meet bond requirements as set forth in Public Contract Code §4108.
 - v. When you demonstrate to the City or it's duly authorized officer, subject to the provisions set forth in Public Contract Code §4107.5, that the name of the Subcontractor was listed as the result of an inadvertent clerical error.
 - vi. When the listed Subcontractor is not licensed pursuant to Contractor License Law.
 - vii. When the City, or it's duly authorized officer, determines that the Work performed by the listed Subcontractor or that the materials or supplies provided by the listed Supplier are substantially unsatisfactory and not in substantial accordance with the Plans and specifications or that the Subcontractor or Supplier is substantially delaying or disrupting the progress of the Work.
 - viii. When the listed Subcontractor is ineligible to work on a public works project pursuant to §§1777.1 or 1777.7 of the Labor Code.

- ix. When the City or its duly authorized agent determines that the listed Subcontractor is not a responsible contractor.
 - b) Permit a Contract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original Subcontractor, Supplier listed in the original Bid without the consent of the City, or it's duly authorized officer.
 - c) Other than in the performance of "Change Orders" causing changes or deviations from the Contract, sublet or subcontract any portion of the Work, or contract for materials or supplies in excess of 0.5% of your total bid or \$10,000, whichever is greater, as to which his or her original Bid did not designate a Subcontractor or Supplier.
8. Following receipt of notice from you of the proposed substitution of a Subcontractor or Supplier, the listed Subcontractor or Supplier who has been so notified shall have 5 Working Days within which to submit written objections to the substitution to the Contract Specialist with a copy to the Engineer. Failure to file these written objections shall constitute the listed Subcontractor or Supplier's consent to the substitution. If written objections are filed, the City shall give notice in writing of at least 5 Working Days to the listed Subcontractor or Supplier of a hearing by the City on your request for substitution.

I. PROMPT PAYMENT.

- 1. You or your Subcontractors shall pay to any subcontractor, not later than 7 Calendar Days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed you on account of the Work performed by the Subcontractors, to the extent of each Subcontractor's interest therein. In cases of Subcontractor performance deficiencies, you shall make written notice of any withholding to the Subcontractor with a copy to the Contracts Specialist. Upon correction of the deficiency, you shall pay the Subcontractor the amount previously withheld within 14 Calendar Days after payment by the City.
- 2. 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, sanctions, and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to you or your Subcontractor in the event of a dispute involving late payment or nonpayment by the Prime Contractor, deficient subcontract performance, or noncompliance by a Subcontractor.

J. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS.

- 1. The City will hold retention from you and will make prompt and regular incremental acceptances of portions, as determined by the Engineer, of the Work and pay retention to you based on these acceptances.

2. You or your Subcontractors shall return all monies withheld in retention from a Subcontractor within 30 Calendar Days after receiving payment for Work satisfactorily completed and accepted including incremental acceptances of portions of the Work by the City.
3. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 Calendar Days may take place only for good cause and with the City's prior written approval. Any violation of this provision by you or your Subcontractor shall subject you or your Subcontractor to the penalties, sanctions, and other remedies specified in §7108.5 of the Business and Professions Code.
4. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to you or your Subcontractor in the event of a dispute involving late payment or nonpayment by you, deficient subcontract performance, or noncompliance by a Subcontractor.

K. CERTIFICATION.

1. The City accepts certifications of DBE, DVBE, MBE, SMBE, SWBE, or WBE by any of the following certifying agencies:
 - a) Current certification by the State of California Department of Transportation (CALTRANS) as DBE, SMBE, or SWBE.
 - b) Current MBE, WBE, or DVBE certification from the California Public Utilities Commission.
 - c) DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business.
 - d) Current certification by the City of Los Angeles as DBE, WBE, or MBE.
 - e) Subcontractors' valid proof of certification status (copies of MBE, WBE, DBE, or DVBE certifications) shall be submitted as required.

L. CONTRACT RECORDS AND REPORTS.

1. You shall maintain records of all subcontracts and invoices from your Subcontractors and Suppliers for work on this project. Records shall show name, telephone number including area code, and business address of each Subcontractor, Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.
2. You shall retain all records, books, papers, and documents pertinent to the Contract for a period of not less than 5 years after Notice of Completion and allow access to said records by the City's authorized representatives.
3. You shall submit the following reports using the City's web-based contract compliance (Prism® portal):
 - a. **Monthly Payment.** You shall submit Monthly Payment Reporting by the 10th day of the subsequent month. Incomplete and/or delinquent

reporting may cause payment delays, non-payment of invoices, or both.

4. The records maintained under item 1, described above, shall be consolidated into a Final Summary Report, certified as correct by an authorized representative of the Contractor. The Final Summary Report shall include all subcontracting activities and be sent to the EOCP Program Manager prior to Acceptance. Failure to comply may result in assessment of liquidated damages or withholding of retention. The City will review and verify 100% of subcontract participation reported in the Final Summary Report prior to approval and release of final retention to you. In the event your Subcontractors are owed money for completed Work, the City may authorize payment to subcontractor via a joint check from the withheld retention.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

SECTION B – SLBE-ELBE SUBCONTRACTING REQUIREMENTS

THESE SPECIAL PROVISIONS SUPPLEMENT THE POLICIES AND REQUIREMENTS ESTABLISHED BY THE CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM SPECIFIED IN THE CITY'S GENERAL EOCP REQUIREMENTS.

A. GENERAL.

1. It is the City's policy to encourage greater availability, capacity development, and contract participation by SLBE and ELBE firms in City contracts. This policy is, in part, intended to further the City's compelling interest to stimulate economic development through the support and empowerment of the local community, ensure that it is neither an active nor passive participant in marketplace discrimination, and promote equal opportunity for all segments of the contracting community.
2. The City is committed to maximizing subcontracting opportunities for all qualified and available firms.
3. This policy applies to City-funded construction contracts. Bidders shall be fully informed of this policy as set forth in these specifications. Mandatory or voluntary subcontracting percentages, Bid Discounts, and restricted competitions are specified in the Contract Documents.
4. You shall make subcontracting opportunities available to a broad base of qualified Subcontractors and shall achieve the minimum SLBE-ELBE Subcontractor participation identified for your project.
5. Failure to subcontract the specified minimum (mandatory) percentages of the Bid to qualified available SLBE-ELBE Subcontractors will cause a Bid to be rejected as non-responsive unless the Bidder has demonstrated compliance with the affirmative steps as specified in the City's document titled "Small Local Business (SLBE) Program, INSTRUCTIONS FOR BIDDERS COMPLETING THE GOOD FAITH EFFORT SUBMITTAL" and has submitted documentation showing that all required positive efforts were made prior to the Bid submittal due date. The required Good Faith Effort (GFE) documentation shall be submitted to the Contract Specialist. The instructions for completing the good faith effort submittal can be found on the City's website:
<https://www.sandiego.gov/sites/default/files/legacy/eoc/pdf/slbefgfeinst.pdf>
6. The current list of certified SLBE-ELBE firms and information for completing the GFE submittal can be found on the City's EOC Department website:
<http://www.sandiego.gov/eoc/programs/slbe.shtml>
7. These requirements may be waived, at the City's sole discretion, on projects deemed inappropriate for subcontracting participation.

B.

DEFINITIONS.

1. The following definitions shall be used in conjunction with these specifications:

- a) **Bid Discount** – Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms.
- b) **Commercially Useful Function** – An SLBE-ELBE performs a commercially useful function when it is responsible for the execution of the Work and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a commercially useful function, the SLBE-ELBE shall also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether an SLBE-ELBE is performing a commercially useful function, an evaluation will be performed of the amount of Work subcontracted, normal industry practices, whether the amount the SLBE-ELBE firm is to be paid under the contract is commensurate with the Work it is actually performing and the SLBE-ELBE credit claimed for its performance of the Work, and other relevant factors. Specifically, an SLBE-ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE-ELBE participation, when in similar transactions in which SLBE-ELBE firms do not participate, there is no such role performed.

- c) **Good Faith Efforts (GFE)** – Documentation of the Bidder’s intent to comply with SLBE Program goals and procedures included in the City’s SLBE Program, Instructions for Completing Good Faith Effort Submittal available from the City’s EOCP website or the Contract Specialist.
- d) **Independently Owned, Managed, and Operated** – Ownership of a SLBE-ELBE firm shall be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the SLBE-ELBE eligibility requirements shall not be eligible to participate in the Program. Moreover, the day-to-day management of the SLBE-ELBE firm shall be direct and independent of the influence of any other businesses that cannot themselves qualify under the SLBE-ELBE eligibility requirements.
- e) **Joint Venture** – An association of two or more persons or business entities that is formed for the single purpose of carrying out a single defined business enterprise for which purpose they combine their capital, efforts, skills, knowledge, or property. Joint ventures shall be established by written agreement to qualify for this program.

- f) **Local Business Enterprise (“LBE”)** – A firm having a Principal Place of Business and a Significant Employment Presence in San Diego County, California that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.
- g) **Minor Construction Program** – A program developed for bidding exclusively among SLBE-ELBE Construction firms.
- h) **Principal Place of Business** – A location wherein a firm maintains a physical office and through which it obtains no less than 50% of its overall customers or sales dollars.
- i) **Protégé** – A firm that has been approved and is an active participant in the City’s Mentor-Protégé Program and that has signed the required program participation agreement and has been assigned a mentor.
- j) **Significant Employee Presence** – No less than 25% of a firm’s total number of employees are domiciled in San Diego County.

C. SUBCONTRACTOR PARTICIPATION.

1. For the purpose of satisfying subcontracting participation requirements, only 1st tier SLBE–ELBE Subcontractors will be recognized as participants in the Contract according to the following criteria:
 - a) For credit to be allowed toward a respective participation level, all listed SLBE-ELBE firms shall have been certified by the Bid due date.
 - b) The Subcontractor shall perform a commercially useful function for credit to be allowed toward subcontractor participation levels. The Subcontractor shall be required by you to be responsible for the execution of a distinct element of the Work and shall carry out its responsibility by actually performing and supervising its own workforce.
 - c) If the Bidder is seeking the recognition of materials, supplies, or both towards achieving any mandatory subcontracting participation level, the Bidder shall indicate on Form AA40 – Named Equipment/Material Supplier List with the Bid the following:
 - i. If the materials or supplies are obtained from a SLBE-ELBE manufacturer, the Bidder will receive 100% of the cost of the materials or supplies toward SLBE participation. For the purposes of counting SLBE-ELBE participation, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
 - ii. If the materials or supplies are obtained from a SLBE-ELBE supplier, the Bidder will receive 60% of the cost of the materials or supplies toward SLBE participation. For the

purposes of counting SLBE-ELBE participation a Supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a supplier, the firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a supplier in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of the suppliers' own distribution equipment shall be by a long-term lease agreement and shall not be on an ad hoc or contract-by-contract basis.

iii. If the materials or supplies are obtained from a SLBE-ELBE, which is neither a manufacturer nor a supplier, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transportation charges for the delivery of materials or supplies required on a job site will be counted toward SLBE-ELBE participation, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves will be counted toward SLBE-ELBE participation.

d) If the Bidder is seeking the recognition of SLBE-ELBE Trucking towards achieving any mandatory subcontracting participation level, the Bidder shall indicate it on Form AA35 – List of Subcontractors with the Bid. The following factors will be evaluated in determining the credit to be allowed toward the respective participation level:

i. The SLBE-ELBE shall be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular Contract and there shall not be a contrived arrangement for the purpose of counting SLBE-ELBE participation.

ii. The SLBE-ELBE shall itself own and operate at least 1 fully licensed, insured, and operational truck used on the Contract.

iii. The SLBE-ELBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

- iv. The SLBE-ELBE may lease trucks from another SLBE-ELBE firm including an owner-operator who is certified as a SLBE-ELBE. The SLBE-ELBE who leases trucks from another SLBE-ELBE receives credit for the total value of the transportation services the lessee SLBE-ELBE provides on the contract.
- v. The SLBE-ELBE may also lease trucks from a non-SLBE-ELBE firm, including an owner-operator. The SLBE-ELBE who leases trucks from a non-SLBE-ELBE is entitled to credit for the total value of transportation services provided by non-SLBE-ELBE lessees not to exceed the value of transportation services provided by SLBE-ELBE owned trucks on the contract. Additional participation by non-SLBE-ELBE lessees receive credit only for the fee or commission it receives as a result of the lease arrangement.
- vi. A lease shall indicate that the SLBE-ELBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the SLBE-ELBE so long as the lease gives the SLBE-ELBE absolute priority for use of the leased truck.

D. SLBE-ELBE SUBCONTRACTOR PARTICIPATION PERCENTAGES.

1. Contracts valued at \$1,500,000 and above will be considered Major Public Works Contracts and will include a mandatory Subcontractor participation requirement for SLBE-ELBE firms.
 - a) The Bidder shall achieve the mandatory Subcontractor participation requirement or demonstrate GFE.
 - b) The Bidders shall indicate the participation on Forms AA35 – List of Subcontractors and AA40 – Named Equipment/Material Supplier List as applicable regardless of the dollar value.
 - c) An SLBE-ELBE Bidder may count its own participation toward achieving the mandatory goal as long as the SLBE-ELBE Bidder performs 51% of the Contract Price.
2. Contracts Valued over \$1,000,000 and under \$1,500,000 will also be considered Major Public Works Contracts and will include the mandatory subcontractor participation requirements described above and the following:
 - a) 5% bid discount for SLBE-ELBE firms.
 - b) Non-certified Contractor will receive 5% bid discount if they achieve the specified mandatory Subcontracting participations.
 - c) Bid discounts shall not apply if the award will result in a total contract cost of \$50,000 in excess of the apparent lowest Bid.
 - d) In the event of a tie bid between a SLBE-ELBE Bidder and a non-SLBE-ELBE Bidder, the SLBE-ELBE Bidder will be awarded the Contract.

- e) In the event of a tie bid between a discounted Bid and a non-discounted Bid, the discounted Bid will be awarded the Contract.
3. Contracts valued over \$500,000 up to \$1,000,000 will be considered Minor Public Works Contracts and will be awarded through a competitive Bid process open only to City certified SLBE-ELBE firms. If there are no bidders or no responsible bidders, the Contract will be made available to all Bidders and will be subject to requirements listed in items 1 and 2 for Major Public Works Contracts above.
4. Contracts valued at \$500,000 and below will also be considered Minor Public Works Contracts and will be awarded through a competitive bid process open only to City certified ELBEs unless there are less than 2 firms available at which it will be awarded through a competitive process open only to the City certified SLBE-ELBE firms. If there are no bidders or no responsible bidders, the Contract will be made available to all Bidders and subject to requirements listed in items 1 and 2 for Major Public Works Contracts above.

E. JOINT VENTURES.

1. The City may allow for Joint Venture bid discounts on some Contracts. Contracts that allow for Joint Venture bid discounts will be designated in Bid documents. A firm that is bidding or competing for City Contracts may partner with a certified SLBE or ELBE to compete for Contracts as a Joint Venture.
2. A Joint Venture shall be between two entities with the same discipline or license as required by the City. Joint ventures will receive bid discounts depending on the SLBE or ELBE percentage of participation. To be eligible for a discount, a Joint Venture Agreement shall be approved by the City at the time of Bid submittal. The maximum allowable discount shall be 5%. The parties shall agree to enter in the relationship for the life of the projects.
3. Joint Venture shall submit a Joint Venture Management Plan, a Joint Venture Agreement, or both at least 2 weeks prior to the Bid due date. Copies of the Joint Venture applications are available upon request to the Contract Specialist. Each agreement or management plan shall include the following:
 - a) Detailed explanation of the financial contribution for each partner.
 - b) List of personnel and equipment used by each partner.
 - c) Detailed breakdown of the responsibilities of each partner.
 - d) Explanation of how the profits and losses will be distributed.
 - e) Description of the bonding capacity of each partner.
 - f) Management or incentive fees available for any one of the partners (if any).
4. Each Joint Venture partner shall perform a Commercially Useful Function. An SLBE or ELBE that relies on the resources and personnel of a non-SLBE or ELBE firm will not be deemed to perform a Commercially Useful Function.
5. Each Joint Venture partner shall possess licenses appropriate for the discipline

for which a proposal is being submitted. If a Joint Venture is bidding on a single trade project, at the time of bid submittal, each Joint Venture partner shall possess the requisite specialty license for that trade bid.

6. The SLBE or ELBE partner shall clearly define the portion of the Work to be performed. This Work shall be of the similar type of Work the SLBE or ELBE partner performs in the normal course of its business. The Joint Venture Participation Form shall specify the Bid items to be performed by each individual Joint Venture partner. Lump sum Joint Venture participation shall not be acceptable.
7. Responsibilities of the SLBE or ELBE Joint Venture Partner:
 - a) The SLBE or ELBE partner shall share in the control, management responsibilities, risks and profits of the Joint Venture in proportion with the level of participation in the project.
 - b) The SLBE or ELBE partner shall perform Work that is commensurate with its experience.
 - c) The SLBE or ELBE partner shall use its own employees and equipment to perform its portion of the Work.
 - d) The Joint Venture as a whole shall perform Bid items that equal or exceed 50% of the Contract Price, excluding the cost of manufactured items, in order to be eligible for a Joint Venture discount.

F. MAINTAINING PARTICIPATION LEVELS.

1. Credit and preference points are earned based on the level of participation proposed prior to the award of the Contract. Once the Project begins you shall achieve and maintain the SLBE-ELBE participation levels for which credit and preference points were earned. You shall maintain the SLBE-ELBE percentages indicated at the Award of Contract and throughout the Contract Time.
2. If the City modifies the original Scope of Work, you shall make reasonable efforts to maintain the SLBE-ELBE participation for which creditor preference points were earned. If participation levels will be reduced, approval shall be received from the City prior to making changes.
3. You shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE-ELBE Subcontractor. Failure to do so shall constitute a material breach of the Contract.
4. If you fail to maintain the SLBE-ELBE participation listed at the time the Contract is awarded and have not received prior approval from the City, the City may declare you in default and will be considered grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.

G. SUBCONTRACTING EFFORTS REVIEW AND EVALUATION.

1. Documentation of your subcontracting efforts will be reviewed by EOCP to verify that you made subcontracting opportunities available to a broad base of qualified Subcontractors, negotiated in good faith with interested Subcontractors, and did not reject any bid for unlawful discriminatory reasons. The EOCP review is based on the federal “Six Good Faith Efforts” model.
2. The GFEs are required methods to ensure that all ELBE and SLBE firms have had the opportunity to compete for the City’s Public Works procurements. The Six Good Faith Efforts, also known as affirmative steps, attract and utilize ELBE and SLBE firms:
 - a) Ensure ELBE firms are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.
 - b) Make information of forthcoming opportunities available to SLBE-ELBE firms and arrange time for Contracts and establish delivery schedules, where requirements permit, in a way that encourages and facilitates participation by SLBE-ELBE firms in the competitive process. This includes posting solicitations for Bids or proposals to SLBE-ELBE firms for a minimum of 10 Working Days before the Bid or Proposal due date.
 - c) Consider in the contracting process whether firms competing for large Contracts could subcontract with SLBE-ELBE firms.
 - d) Encourage contracting with a consortium of ELBE-SLBE firms when a Contract is too large for one of these firms to handle individually.
 - e) Use the services and assistance of the City’s EOC Office and the SLBE-ELBE Directory.
 - f) If you award subcontracts, require your Subcontractors to take the steps listed above.

H. GOOD FAITH EFFORT DOCUMENTATION.

1. If the specified SLBE-ELBE Subcontractor participation percentages are not met, you shall submit information necessary to establish that adequate GFEs were taken to meet the Contract Subcontractor participation percentages. See the City’s document titled “Small Local Business (SLBE) Program, INSTRUCTIONS FOR BIDDERS COMPLETING THE GOOD FAITH EFFORT SUBMITTAL.” The instructions for completing the good faith effort submittal can be found on the City’s website:

<https://www.sandiego.gov/sites/default/files/legacy/eoc/pdf/slbegfeinst.pdf>

I. SUBCONTRACTOR SUBSTITUTION.

1. Evidence of fraud or discrimination in the substitution of Subcontractors will result in sanctions including assessment of penalty fines, termination of

Contract, or debarment. This section does not replace applicable California Public Contract Code.

J. FALSIFICATION OF SUB-AGREEMENT AND FRAUD.

1. Falsification or misrepresentation of a sub-agreement as to company name, Contract amount or actual Work performed by Subcontractors, or any falsification or fraud on the part your submission of documentation and forms pursuant to this program, will result in sanctions against you including assessment of penalty fines, termination of the Contract, or debarment. Instances of falsification or fraud which are indicative of an attempt by you to avoid subcontracting with certain categories of Subcontractors on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability shall be referred to the Equal Opportunity Contracting Program's Investigative Unit for possible violations of Article 2, Division 35 of the City Administrative Code, §§22.3501 et seq. (Nondiscrimination in Contracting).

K. RESOURCES.

1. The current list of certified SLBE-ELBE firms and information for completing the GFE submittal can be found on the City's EOC Department website: <http://www.sandiego.gov/eoc/programs/slbe.shtml>

ATTACHMENT D
PREVAILING WAGE

ATTACHMENT D

PREVAILING WAGE

1. **PREVAILING WAGE RATES:** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
 - 1.1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its subcontractors shall ensure that all workers who perform work under this Contract 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). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 1.1.1. Copies of such prevailing rate of per diem wages are on file at the 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>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 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 life of this Contract. 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 and shall apply to this Contract 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 Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.**Penalties for Violations.** Contractor 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. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

- 1.3. Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

 - 1.3.1.** Contractor and their subcontractors shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 1.4. Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 1.5. Working Hours.** Contractor and their subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict 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) specify penalties to be imposed on contractors 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.
- 1.6. Required Provisions for Subcontracts.** Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 1.7. Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 1.8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Prevailing Wage Unit at 858-627-3200.

- 1.10. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It 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 20103.5 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.
- 1.10.1.** A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.
- 1.10.2.** By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.
- 1.11. Stop Order.** For Contractor or its subcontractors engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractors or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.
- 1.12. List of all Subcontractors.** The Contractor shall provide the list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Contract prior to any work being performed; and the Contractor shall provide a complete list of all subcontractors with each invoice. Additionally, Contractor shall provide the City with a complete list of all subcontractors (regardless of tier) utilized on this contract within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Construction Management Professional until at least thirty (30) days after this information is provided to the City.
- 1.13. Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. Seq. The only recognized exemptions are listed below:

- 1.13.1.** Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1)
- 1.13.2.** Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the Contract. (Labor Code section 1771.4).
- 1.13.3.** List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 1.11. above. (Labor code section 1773.3).

ATTACHMENT E
SUPPLEMENTARY SPECIAL PROVISIONS

SUPPLEMENTARY SPECIAL PROVISIONS

The following Supplementary Special Provisions (SSP) modifies the following documents:

1. The **2021 Edition** of the Standard Specifications for Public Works Construction (The "GREENBOOK").
2. The **2021 Edition** of the City of San Diego Standard Specifications for Public Works Construction (The "WHITEBOOK"), including the following:
 - a) General Provisions (A) for all Construction Contracts.
 - b) General Provisions (C) for Job Order Contracting (JOC).

SECTION 1 – GENERAL, TERMS, DEFINITIONS, ABBREVIATIONS, UNITS OF MEASURE, AND SYMBOLS

1-2 TERMS AND DEFINITIONS. To the "WHITEBOOK":

To item 47, "Holiday", ADD the following:

Holiday	Observed On
Juneteenth	June 19

To item 55, "Normal Working Hours", DELETE in its entirety and SUBSTITUTE with the following:

Normal Working Hours: Normal Working Hours shall be defined in the Task Order or Traffic Control Permits.

1-7.2 **Contract Bonds.** To the "WHITEBOOK", item 1 and item 2, DELETE in their entirety and SUBSTITUTE with the following:

1. **Before the execution of a Task Order, a payment and performance bond must be filed with, and approved by, the City in the amounts and for the purposes noted.** Bonds shall be executed by a responsible surety as follows:
 - a) If the Work is being funded with state or local money, consistent with California Code of Civil Procedure §995.670, the Surety shall be an "admitted surety" authorized by the State of California Department of Insurance to transact surety insurance in the State.

- b) If the Work is being funded with federal money, the Surety shall be listed in the U.S. Treasury Department Circular 570 and shall be in conformance with the specified Underwriting Limitations.
- 2. Each bond shall incorporate, by reference, a Task Order and shall be signed by both the Bidder and the Surety. The Signature of the authorized agent of the Surety shall be notarized. You shall provide the following bonds:
 - a) For Contracts over \$25,000:
 - i. A "Payment Bond" (Materials and Labor Bond) for 100% of a Task Order Price to satisfy claims of material Suppliers and of mechanics and laborers employed on the Work. You shall maintain the bond in full force and effect until Task Order NOC and until all claims for materials and labor are paid and shall otherwise comply with the Government Code.
 - ii. A "Faithful Performance Bond" for 100% of a Task Order Price to guarantee faithful performance of Work, within the time prescribed and in a manner satisfactory to the City, that materials and workmanship shall be free from original or developed defects.

SECTION 2 - SCOPE OF THE WORK

2-2 PERMITS, FEES, AND NOTICES. To the "WHITEBOOK", ADD the following:

- 2. The City will obtain, at no cost to you, the following permits:
 - a) Refer to Task Order Documents.

SECTION 3 - CONTROL OF THE WORK

3-2 SELF-PERFORMANCE. To the "GREENBOOK", DELETE in its entirety and SUBSTITUTE with the following:

- 1. The self performance percentage requirement will be waived for Prime Contractors meeting the Class B License requirement of this Contract.

3-4 AUTHORITY OF THE BOARD AND THE ENGINEER. To the "WHITEBOOK", ADD the following:

- 4. Refer to Task Order Documents for Appendix - Sample Contractor Performance Evaluation Form.

3-7.6.1 Use of Computer Aided Drafting and Design. To the "WHITEBOOK", Item 1, DELETE in its entirety and SUBSTITUTE the following:

- 1. Design Tasks. Use Bentley Connect ORD Version 10.12 format with the ability to convert to AutoCAD for the preparation of Plans and As-Built drawings in accordance with the City's CADD Standards.

3-12.1 General. To the “WHITEBOOK”, ADD the following:

3. You shall sweep all paved areas within the Work site and all paved haul routes as specified: See Task Order Documents.

3-13.1 Completion. To the “WHITEBOOK”, ADD the following:

2. Substantial Completion, in accordance with 3-13.1.1, “Requirements Before Requesting Substantial Completion”, may be completed in phases for this project as defined below:

Phase	Work Description	Limits of Work
1	Refer to Task Order Documents	Refer to Task Order Documents
2	Refer to Task Order Documents	Refer to Task Order Documents
3	Refer to Task Order Documents	Refer to Task Order Documents

3-15.2 Integration of the Work with Separate Contractors. To the “WHITEBOOK”, ADD the following:

2. The list of Separate Contractors includes:
 - a) Refer to Task Order Documents.

3-15.3 Coordination. To the “WHITEBOOK”, ADD the following:

2. Other adjacent City projects may be scheduled for construction for the same time period in the vicinity of a Task Order. Coordinate the Work with the adjacent projects as listed in the Task Order Documents.

ADD: SECTION 4 - CONTROL OF MATERIALS

4-3.4 Specialty Inspection Paid for by the Contractor. To the “WHITEBOOK”, ADD the following:

2. The specialty inspections required are listed as follows:
 - a) Refer to Task Order Documents.

4-6 TRADE NAMES. To the “WHITEBOOK”, ADD the following:

11. You shall submit your list of proposed substitutions for an “equal” item **no later than 5 Working Days after the issuance of the Task Order Notice to Proceed (NTP)** and on the City’s Product Submittal Form available at:

<https://www.sandiego.gov/ecp/edocref/>

SECTION 5 – LEGAL RELATIONS AND RESPONSIBILITIES

5-3.3 Payroll Records. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. You and your Subcontractors shall submit weekly certified payrolls, including a Statement of Compliance signed under penalty of perjury, reflecting the wages of all employees engaged in the Work, utilizing the City's designated web-based contract and labor compliance software.
2. You and your Subcontractors shall submit the following Labor Compliance required documents to the OLSE;
 - a) City of San Diego Labor Compliance Authorized Signatory Form;
 - b) City of San Diego List of Trades and Crafts;
 - c) Labor Compliance Checklist;
 - d) Fringe Benefit Statement;
 - e) DAS 140 Form & Transmittal Confirmation;
 - f) DAS 142 & Transmittal Confirmation;
 - g) State & Federal Apprenticeship Certifications;
 - h) Payroll Confirmations (as requested per CCR 16432); and
 - i) Other Deduction Forms (letter or documentation relating to nonstandard deductions);
3. You and your Subcontractors shall submit the following PLA and Labor Compliance required documents utilizing the City's designated web-based contract and labor compliance software program:
 - a) Letter of Assent (PLA Attachment B);
 - b) Workforce Dispatch Request Form;
 - c) Contractor Core Workforce Form [if required];
 - d) Monthly Proof of Fringe Benefit Payments to Union Trust;
 - e) Certified Payroll Report (Performance Report with Statement of Compliance, Non-Performance Reports);
 - f) Jobs Coordinator Designation Form (Prime Contractor); and
 - g) For all dispatched workers, identify the following: race, ethnicity, gender, permanent residence zip code, construction project hours worked, apprenticeship program affiliation, trade classification, and union affiliation.

5-4 **INSURANCE.** To the "GREENBOOK", DELETE in its entirety and SUBSTITUTE with the following:

5-4 **INSURANCE.**

1. The insurance provisions herein shall not be construed to limit your indemnity and defense duties set forth in the Contract.

5-4.1 **Policies and Procedures.**

1. You shall procure the insurance described below, at your sole cost and expense, to provide coverage against claims for loss including injuries to persons or damage to property, which may arise out of or in connection with the performance of the Work by you, your agents, representatives, officers, employees or Subcontractors.
2. Insurance coverage for property damage resulting from your operations is on a replacement cost valuation. The market value will not be accepted.
3. You shall maintain this insurance as required by this Contract and at all times thereafter when you are correcting, removing, or replacing Work in accordance with this Contract. Your duties under the Contract, including your indemnity obligations, are not limited to the insurance coverage required by this Contract.
4. If you maintain broader coverage or higher limits than the minimums shown below, City requires and shall be entitled to the broader coverage or the higher limits maintained by you. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.
5. Your payment for insurance shall be included in the Contract Price you bid. You are not entitled to any additional payment from the City to cover your insurance, unless the City specifically agrees to payment in writing. Do not begin any Work under this Contract or allow any Subcontractors to begin work, until you have provided, and the City has approved, all required insurance.
6. Policies of insurance shall provide that the City is entitled to 30 days advance written notice of cancellation or non-renewal of the policy or 10 days advance written notice for cancellation due to non-payment of premium. Maintenance of specified insurance coverage is a material element of the Contract. Your failure to maintain or renew coverage and to provide evidence of renewal during the term of the Contract may be treated by the City as a material breach of the Contract.

5-4.2 **Types of Insurance.**

5-4.2.1 **General Liability Insurance.**

1. Commercial General Liability Insurance shall be written on the current version of the ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad.

2. The policy shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse), independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract).
3. There shall be no endorsement or modification limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. You shall maintain the same or equivalent insurance for at least 10 years following completion of the Work.
4. All costs of defense shall be outside the policy limits. Policy coverage shall be in liability limits of not less than the following:

<u>General Annual Aggregate Limit</u>	<u>Limits of Liability</u>
Other than Products/Completed Operations	\$10,000,000
Products/Completed Operations Aggregate Limit	\$10,000,000
Personal Injury Limit	\$5,000,000
Each Occurrence	\$5,000,000

5-4.2.2 Commercial Automobile Liability Insurance.

1. You shall provide a policy or policies of Commercial Automobile Liability Insurance written on the current version of the ISO form CA 00 01 12 90 or later version or equivalent form providing coverage at least as broad in the amount of \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned, and hired automobiles ("Any Auto").
2. All costs of defense shall be outside the limits of the policy.

5-4.2.3 Workers' Compensation Insurance and Employers Liability Insurance.

1. In accordance with the provisions of California Labor Code section 3700, you shall provide, at your expense, Workers' Compensation Insurance and Employers Liability Insurance to protect you against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by your failure to comply with this requirement.
2. Statutory Limits shall be provided for Workers' Compensation Insurance as required by the state of California, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
3. By signing and returning the Contract, you certify that you are aware of the provisions of California's Workers' Compensation laws, including Labor Code section 3700, which requires every employer to be insured against liability for

workers' compensation or to undertake self-insurance, and that you will comply with these provisions before commencing the Work.

5-4.2.6 Contractors Builders Risk Property Insurance.

1. You shall provide at your expense, and maintain until Final Acceptance of the Work, a Special Form Builders Risk Policy or Policies. This insurance shall be in an amount equal to the replacement cost of the completed Work (without deduction for depreciation) including the cost of excavations, grading, and filling. The policy or policies limits shall be 100 percent of the value of the Work under this Contract, plus 15 percent to cover administrative costs, design costs, and the costs of inspections and construction management.
2. Insured property shall include material or portions of the Work located away from the Site but intended for use at the Site and shall cover material or portions of the Work in transit. The policy or policies shall include as insured property scaffolding, falsework, and temporary buildings located at the Site. The policy or policies shall cover the cost of removing debris, including demolition.
3. The policy or policies shall provide that all proceeds shall be payable to the City as Trustee for the insured, and shall name the City, the Contractor, Subcontractors, and Suppliers of all tiers as named insured. The City, as Trustee, will collect, adjust, and receive all monies that become due and payable under the policy or policies, may compromise any and all claims, and will apply the proceeds of this insurance to the repair, reconstruction, or replacement of the Work.
4. Any deductible applicable to the insurance shall be identified in the policy or policies documents. The responsibility for paying the part of any loss not covered because of the deductibles shall be apportioned among the parties, except for the City, as follows: if there is more than one claimant for a single occurrence, then each claimant shall pay a pro-rata share of the per occurrence deductible based upon the percentage of their paid claim to the total paid for insured. The City shall be entitled to 100 percent of its loss. You shall pay the City any portion of the loss not covered because of a deductible; at the same time the proceeds of the insurance are paid to the City as Trustee.
5. Any insured, other than the City, making claim to which a deductible applies shall be responsible for 100 percent of the loss not insured because of the deductible.

5-4.2.8 Architects and Engineers Professional Insurance (Errors and Omissions Insurance).

1. For Contracts with required engineering services, including Design-Build and preparation of engineered Traffic Control Plans (TCP) by you, you shall keep or require all of your employees and Subcontractors, who provide professional engineering services under Contract, to provide to the City proof of

Professional Liability coverage with a limit of no less than **\$1,000,000** per claim and **\$2,000,000** aggregate per policy period of one year.

2. You shall ensure the following:
 - a) The policy retroactive date is on or before the date of commencement of the Project.
 - b) The policy will be maintained in force for a period of three years after completion of the Project or termination of the Contract, whichever occurs last. You agree that, for the time period specified above, there will be no changes or endorsements to the policy that affect the specified coverage.
3. If professional engineering services are to be provided solely by the Subcontractor, you shall:
 - a) Certify this to the City in writing, and
 - b) Agree in writing to require the Subcontractor to procure Professional Liability coverage in accordance with the requirements set forth here.

5-4.3 Rating Requirements. Except for the State Compensation Insurance Fund, all insurance required by this Contract shall be carried only by responsible insurance companies with a rating of, or equivalent to, at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the state of California, and that have been approved by the City.

5-4.3.1 Non-Admitted Carriers. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the state of California and is included on the List of Approved Surplus Lines Insurers (LASLI list).

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described in this Contract.

5-4.4 Evidence of Insurance. You shall furnish the City with original Certificates of Insurance, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause), prior to your commencement of Work under this Contract. In addition, The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

5-4.5 Policy Endorsements.

5-4.5.1 Commercial General Liability Insurance.

5-4.5.1.1 Additional Insured. To the fullest extent permitted by law and consistent with the limiting provisions set forth at California Civil Code section 2782, California Insurance

Code section 11580.04, and any applicable successor statutes limiting indemnification of public agencies that bind the City, the policy or policies shall be endorsed to include as an Additional Insured the City and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of:

1. Ongoing operations performed by you or on your behalf,
2. your products,
3. your work, e.g., your completed operations performed by you on your behalf, or
4. premises owned, leased, controlled, or used by you.

5-4.5.1.2 Primary and Non-Contributory Coverage. The policy shall be endorsed to provide that the coverage with respect to operations, including the completed operations, if appropriate, of the Named Insured is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents and representatives. Further, it shall provide that any insurance maintained by the City and its elected officials, officers, employees, agents and representatives shall be in excess of your insurance and shall not contribute to it.

5-4.5.1.3 Project General Aggregate Limit. The policy or policies shall be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the Work. Only claims payments which arise from the Work shall reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

5-4.5.2 Workers' Compensation Insurance and Employers Liability Insurance.

5-4.5.2.1 Waiver of Subrogation. The policy or policies shall be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from Work performed by the Named Insured for the City.

5-4.5.5 Builders Risk Endorsements.

5-4.5.5.1 Waiver of Subrogation. The policy or policies shall be endorsed to provide that the insurer will waive all rights of subrogation against the City, and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and that arise from Work performed by the Named Insured for the City.

5-4.5.5.2 Builders Risk – Partial Utilization. If the City desires to occupy or use a portion or portions of the Work prior to Acceptance,, the City will notify you, and you shall

immediately notify your Builder's Risk insurer and obtain an endorsement that the policy or policies shall not be cancelled or lapse on account of any use or occupancy. You shall obtain the endorsement prior to the City's occupation and use.

5-4.6 Deductibles and Self-Insured Retentions. You shall disclose deductibles and self-insured retentions to the City at the time the evidence of insurance is provided. The City may require you to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

5-4.7 Reservation of Rights. The City reserves the right, from time to time, to review your insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to the City. The City will reimburse you, without overhead, profit, or any other markup, for the cost of additional premium for any coverage requested by the Engineer, but not required by this Contract.

5-4.8 Notice of Changes to Insurance. You shall notify the City, in writing, 30 days prior to any material change to the policies of insurance provided under this Contract. This written notice is in addition to the requirements of paragraph 6 of Section 5-4.1.

5-4.9 Excess Insurance. Policies providing excess coverage shall follow the form of the primary policy or policies, including, all endorsements.

5-10.2.1 Public Notice by Contractor. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

5-10.2.1 Public Notice by Contractor.

1. Post Project Identification Signs in accordance with 3-11.2, "Project Identification Signs".
2. No less than 5 and no more than 10 Working Days in advance of Project construction activities and utility service interruptions, you shall notify all critical facilities, businesses, institutions, property owners, residents, or any other impacted stakeholders within a minimum 300-foot (90 m) radius of the Project i.e., work area and any other affected areas as shown on the "Notification of Planned Water Shutdown" when you perform the Work.
3. The notification process must be repeated for delays and long pauses in construction activities. Verbal and written notifications, such as door hangers, shall be sent to critical facilities (including but not limited to police stations, fire stations, hospitals, and schools). A copy of written notifications sent to any critical facility shall also be sent to the Engineer.
4. You shall keep records of the people contacted, along with the dates of notification, and shall provide the record e.g., time-stamped pictures of the notices, to the Engineer upon request. You shall identify all other critical facilities that need to be notified.

5. Verbal and written notifications shall also include specific impacts from the construction of the City facilities, e.g., fire hydrants, air vacuum and blow-off devices, pedestrian ramps, and sidewalks, e.g., the loss of parking, access, and impact to private property, e.g., landscaping.
6. Furnish and distribute public notices in the form of door hangers using the City's format to all occupants and/or property owners along streets and all critical facilities such as police stations, fire stations, hospitals, and schools.
7. Where Work is to be performed at least 5 and at most 10 Working Days before starting construction, survey activities, or impacting the community as approved by the Engineer.
8. Within 5 Working Days of the completion or pausing of your construction activities where Work was performed, you shall distribute public notices in the form of door hangers, which outline the anticipated dates of Asphalt Resurfacing, Slurry Seal, Sidewalk, or Curb Ramp Work. Upon resuming construction activities, you shall redistribute door hangers.
9. "No Parking" signs shall be placed 72 hours before the scheduled construction activities and must include the name and phone number of the Contractor. The Contractor shall document the placement of the signs with time-stamped pictures.
10. Leave the door hanger notices on or at the front door of each dwelling and apartment unit and at each commercial building tenant abutting each street block segment.
11. Where the front doors of apartment units are inaccessible or occupants are unavailable, distribute the door hanger notices to the apartment manager or security officer and leave your contact information, such as business cards.
12. Provide time-stamped pictures of the notices to the Engineer.
13. Door Hanger Material: You shall use Blanks/USA brand, Item Number DHJ5B6WH, 1¼ inch (31.8 mm) Holes (removed), 2-up Jumbo Door Hanger in Bristol White, or approved equal.
14. Door hangers shall include the funding source if project is funded in part by State Gas Tax Revenue (SB1 Funds). Refer to Task Order Documents.
15. Mailed Notice Material: You shall use Cougar by Domtar, Item Number 2834, or approved equal.
16. For all Work on private property, contact each owner and occupant individually a minimum of 15 Working Days before the Work. If the Work has been delayed, re-notify owners and occupants of the new Work schedule, as directed by the Engineer.
17. A sample of public notices will be included in the Contract. Refer to Task Order Documents.

5-10.3 Exclusive Community Liaison Services. To the "WHITEBOOK", ADD the following:

2. You may be required to retain an Exclusive Community Liaison for the Project that shall implement Work in accordance with the specifications described in 5-10.2 "Community Outreach Services" and 5-10.3 "Exclusive Community Liaison Services". Refer to Task Order Documents.

ADD:

5-10.3.2 Weekly Updates Recipients.

1. Submit a weekly correspondence with updates, traffic control issues and locations, lane closures, and any other pertinent information (with additional contact names given during award process) to the following recipients:
 - a) Refer to Task Order Documents.

5-11 NEWSLETTER. To the "WHITEBOOK", ADD the following:

2. You shall provide the following information:
 - a) Refer to Task Order Documents.

5-15.16.1 Monitoring of Potentially Petroleum Contaminated Soil. To the "WHITEBOOK", ADD the following:

5. When applicable, the areas of known or suspected contamination will be specified in the Task Order Documents.

SECTION 6 – PROSECUTION AND PROGRESS OF THE WORK

6-1.1 Construction Schedule. To the "WHITEBOOK", ADD the following:

3. Refer to Task Order Documents for Sample City Invoice.
4. When applicable, the **Calendar Days** for the Plant Establishment Period specified in the Task Order Documents shall begin with the acceptance of installation of the vegetation plan in accordance with Section 801-6, "MAINTENANCE AND PLANT ESTABLISHMENT" and the included in the stipulated Contract Task Time.

6-2.1 Moratoriums. To the "WHITEBOOK", ADD the following:

4. Do not Work in the areas where there is currently a moratorium issued by the City. The areas subject to moratorium are listed below:
 - a) Refer to Task Order Documents.

6-6.1.1 Environmental Document.

1. You shall comply with all requirements of the **Environmental Document** as set forth in the **Task Order Documents**.

2. Compliance with the City's environmental document shall be included in the Contract Price, unless separate bid items have been provided.

6-6.2.1 Archaeological and Native American Monitoring Program. To the "WHITEBOOK", ADD the following:

4. Refer to Task Order Documents if Work by a qualified archaeologist and Native American Monitor is required for this Contract. You shall coordinate your activities and Schedule with the activities and schedules of the archaeologist and Native American monitor. Notify the Engineer before noon of the Working Day before monitoring is required. See 3-5, "INSPECTION" for details.

6-6.2.2 Paleontological Monitoring Program. To the "WHITEBOOK", ADD the following:

3. Refer to Task Order Documents if Work by a qualified paleontologist is required for this Contract. You shall coordinate your activities and Schedule with the activities and schedules of the paleontologist monitor. Notify the Engineer before noon of the Working Day before monitoring is required. See 3-5, "INSPECTION" for details.

6-9 LIQUIDATED DAMAGES. To the "WHITEBOOK", item 2, DELETE in its entirety and SUBSTITUTE with the following:

2. The execution of the Contract shall constitute agreement between you and the City that the liquidated damage amount described in the table below is the value of the damage caused by your failure to complete the Work within the allotted time. Such sum shall not be construed as a penalty and may be deducted from your payments if such delay occurs.

Contract Value	Liquidated Damages Daily Amount
Less than \$200,001	\$1,000
\$200,001 to \$500,000	\$1,500
\$500,001 to \$1,000,000	\$2,000
\$1,000,001 to \$2,000,000	\$2,500
\$2,000,001 to \$5,000,000	\$3,000
\$5,000,001 to \$10,000,000	\$5,500
\$10,000,001 to \$20,000,000	\$6,500
Greater Than \$20,000,000	\$7,000

SECTION 7 – MEASUREMENT AND PAYMENT

7-3.2.1 Application for Progress Payment. To the “WHITEBOOK”, item 3, DELETE in its entirety and SUBSTITUTE with the following:

3. The City shall not pay progress or partial payments until you submit to the Engineer an acceptable updated Schedule. It is solely your responsibility to prepare and submit the Schedule updates.

7-3.9 Field Orders. To the “WHITEBOOK”, DELETE in its entirety and SUBSTITUTE with the following:

1. If the cumulative total of Field Order items of Work does not exceed the “**Field Orders**” Bid Item, the City shall pay those Field Orders as shown below:

**TABLE 7-3.9
FIELD ORDER LIMITS**

Contract Price	Maximum Each Field Order Work Amount
Less than \$1,000,001	\$10,000
\$1,000,001 to \$5,000,000	\$20,000
\$5,000,001 to \$10,000,000	\$25,000
\$10,000,001 to \$30,000,000	\$40,000
Greater than \$30,000,000	\$70,000

7-3.11 Compensation Adjustments for Price Index Fluctuations. To the “WHITEBOOK” ADD the following:

5. This Contract **is not** subject to the provisions of The “WHITEBOOK” for Compensation Adjustments for Price Index Fluctuations for paving asphalt.

SECTION 8 - FACILITIES FOR AGENCY PERSONNEL

8-2 FIELD OFFICE FACILITIES. To the “WHITEBOOK”, ADD the following.

2. Refer to Task Order Documents.

SECTION 209 - PRESSURE PIPE

209-7.2 Requirements. To the "GREENBOOK", Table 209-7.2 DELETE in its entirety and SUBSTITUTE with the following:

TABLE 209-7.2

Function	Type	Materials/Method	
Pipe Contents Identification	Pipe Color (Plastic Pipe or Polywrap ¹)	Blue for Potable Water. Purple for Recycled Water. Green for Sewage.	
	AND		
	Stenciling	Stenciling marked on pipe in contrasting color to background color of pipe stating: "POTABLE WATER", "CAUTION RECYCLED WATER - DO NOT DRINK" or "CAUTION SEWER" as appropriate. 5/8" (16 mm) high letters. Repeated at 1 foot (300 mm) intervals.	
	OR		
	Identification Tape	Polyethylene tape 6" (150 mm) wide and 4 mils (100 µm) minimum thickness with 2" (50 mm) high letters stating: "POTABLE WATER", "CAUTION RECYCLED WATER - DO NOT DRINK" or "CAUTION SEWER" as appropriate. For pipe > 12" (300 mm) diameter, use 12" (300 mm) wide tape. Color - Blue With white letters for potable water, Purple With white letters for recycled water, Green with white letters for sewage. Attached to top of pipe with adhesive tape.	
	Pipe Warning and Locating	Warning and Locating Tape	Polyethylene tape 6" (150 mm) Wide and 4 mils (100 µm) minimum thickness with 2"(50 mm) high letters stating: "CAUTION: WATERLINE BURIED BELOW", "CAUTION RECLAIMED WATERLINE BURIED BELOW - DO NOT DRINK", or "CAUTION: SEWER BURIED BELOW" as appropriate. For pipe > 12" (300 mm) diameter, use 12" (300 mm) wide tape. Color - blue with black or white letters for potable water, Purple With black or white letters for recycled water, Green with black or white letters for sewage. Place in pipe trench 18" (450 mm) above pipe. Tape shall contain metallic strip that can be registered by magnetic field locating device.
			OR
Locating Wire			In lieu of installing metallic warning tape; non-metallic warning tape 18" (450 mm) above pipe and 10-gauge copper wire attached to top of pipe and accessibly terminated may be used.

¹Polywrap shall not be used as pipe color identification for plastic pipe.

SECTION 601 - TEMPORARY TRAFFIC CONTROL FOR CONSTRUCTION AND MAINTENANCE WORK ZONES

601-2.1.2 Engineered Traffic Control Plans (TCP). To the "WHITEBOOK", ADD the following:

- 5. Engineered TCP (2 foot x 3 foot size) may be required for the following areas:
 - a) Refer to Task Order Documents.

SECTION 800 – MATERIALS

800-1.2.5 Mulch. To the “WHITEBOOK”, item 3, subsection “i”, ADD the following:

Type 9 Mulch shall be 2 or 4 inches maximum in size. Refer to Task Order Documents.

SECTION 802 – NATIVE HABITAT PROTECTION, INSTALLATION, MAINTENANCE, AND MONITORING

802-2.1 Project Biologist. To the “WHITEBOOK”, item 2, DELETE in its entirety and SUBSTITUTE with the following:

2. Refer to Task Order Documents for any applicable biological monitoring Work required for this Contract. You shall coordinate your activities and Schedule with the activities and schedules of the Project Biologist.

802-4 Payment. To the “WHITEBOOK”, item 1, subsection “e”, DELETE in its entirety and SUBSTITUTE with the following:

- e. The payment for the monitoring, reporting, and maintenance Work required during the maintenance period beyond the PEP in accordance with the Long Term Maintenance and Monitoring Agreement (LTMMA) included in the Contract Documents includes payment for the Project Biologist when required, furnishing the required reports, site observations, and bond(s), and shall be included in the lump sum Bid item for the “25-Month Revegetation Maintenance and Monitoring Program” or the “60-Month Re-vegetation Maintenance and Monitoring Program”, unless otherwise specified.

SECTION 1001 – CONSTRUCTION BEST MANAGEMENT PRACTICES (BMPs)

1001-1 GENERAL. To the “WHITEBOOK”, ADD the following:

8. Based on a preliminary assessment by the City, this Contract may be subject to SWPPP or WPCP. Refer to Task Order Documents.

1001-2.10 BMP Inspection, Maintenance, and Repair. To the “WHITEBOOK”, ADD the following:

5. Maintenance activities shall be documented by the QSP or QSD in the Construction BMP Maintenance Log for projects subject to SWPPP requirements. See Task Order Documents.

SUPPLEMENTARY SPECIAL PROVISIONS

APPENDICES

FOR JOC PROJECTS, TECHNICALS AND/OR APPENDICES WILL BE INCLUDED WITH THE TASK ORDER DOCUMENTS

ATTACHMENT F

RESERVED

ATTACHMENT G

**IN-USE OFF-ROAD DIESEL FUELED FLEET REGULATION (OFF-ROAD REGULATION)
COMPLIANCE (CARB)**

ATTACHMENT G

IN-USE OFF-ROAD DIESEL FUELED FLEET REGULATION (OFF-ROAD REGULATION) COMPLIANCE (CARB)

The California Air Resources Board (CARB) approved amendments to the Off-Road Regulations which can be found at 13 California Code of Regulations (CCR) sections 2449, 2449.1, and 2449.2. These amendments apply to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road. See 13 CCR section 2449 (b) for the full list of vehicles covered by these Off-Road Regulations.

Beginning January 1, 2024, Contractor shall be subject to the requirements below. No Contractor or public works awarding body, as applicable, shall enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and its listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet. Contractor shall comply with the following requirements:

- (1) For a project involving the use of vehicles subject to the Off-Road Regulation, Contractor must obtain copies of the valid Certificates of Reported Compliance, as described in 13 CCR section 2449(n), for the fleet selected for this Contract and their listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet and provide copies of such Certificates of Reported Compliance to the City within 10 days of issuance of the Notice of Intent to Award letter. Contractor shall enter into a contract with a fleet for which it does not have a valid Certificates of Reported Compliance for the fleet and its listed subcontractors. City shall not enter into a contract with Contractor until all current Certificates of Reported Compliance for the fleet to be used on this Project are provided by Contractor.
- (2) The Certificates of Reported Compliance received by Contractor for this Project must be retained by Contractor for three years after the Project's completion. Upon request by CARB, these records must be provided to CARB within five business days of the request. Additionally, upon request by City, these records must be produced to City within five business days of the request.
- (3) For emergency contracts that meet the definition of "emergency operations" as defined in 13 CCR section 2449(c)(18), they are exempt from the requirements in 13 CCR section 2449(i)(1)-(3) and sections (1) and (2) above, but must still retain records verifying vehicles subject to the regulation that are operating on the "emergency operations" project are actually being operated on the project for "emergency operations" only. These records, as described in more detail below in section (B) must be retained by Contractor for three years after completion of the Project and upon request from either CARB or the City, Contractor shall provide those

records to the requesting party within five business days. All other emergency contracts that do not meet the definition of “emergency operations” must comply with the requirements above and 13 CCR section 2449(i)(1) – (3).

A. “Emergency Operations” is defined as:

1. Any activity for a project conducted during emergency, life threatening situations, where a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or an essential public service; or in conjunction with any officially declared disaster or state of emergency, as declared by an authorized health officer, agricultural commissioner, fire protection officer, or other authorized health officer;
2. Any activity for a project conducted by essential service utilities to provide electricity, natural gas, telephone, water, or sewer during periods of service outages and emergency; or
3. Operations including repairing or preventing damage to roads, buildings, terrain, and infrastructure as a result of an earthquake, flood, storm, fire, other infrequent act of nature, or terrorism. Routine maintenance or construction to prevent public health risks does not constitute emergency operations under the Off-Road Regulations.

B. The records retained by Contractor for “emergency operations” projects must include:

1. A description of the emergency;
2. The address or a description of the specific location of the emergency;
3. The dates on which the emergency operations were performed; and
4. An attestation by the fleet that the vehicles are operated on the Project for “emergency operations” only.

Beginning **January 1, 2024**, Contractor is also subject to the requirements described in 13 CCR section 2449(j).

- (1) Between March 1 and June 1 of each year, Contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in 13 CCR section 2449(n), from all fleets that have an ongoing contract with Contractor as of March 1 of that year. Contractors shall not write contracts to evade this requirement.
- (2) Contractor shall only allow fleets with valid Certificates of Reported Compliance on the Contractor's job sites.

- (3) If Contractor discovers that any fleet intending to operate vehicles subject to this regulation for Contractor does not have a valid Certificate of Reported Compliance, as defined in 13 CCR section 2449(n), or if Contractor observes any noncompliant vehicles subject to the regulation on Contractor's job site, then Contractor must report the that to CARB at <https://calepacomplaints.secure.force.com/complaints/Complaint>, or email dieselcomplaints@arb.ca.gov, for each fleet without a valid Certificate of Reported Compliance or each noncompliant vehicle, as applicable, within five business days of such discovery. See 13 CCR 2449(n) for the information required to be disclosed to CARB when reporting non-compliance.
- (4) Upon request by CARB, Contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to this regulation operating at the job site or for Contractor.
- (5) Contractor shall prominently display signage for any project where vehicles subject to this Off-Road Regulation will operate for 8 calendar days or more. The signage must be posted by the eighth calendar day from which the first vehicle operates. The signage will be in lettering larger than size 14-point type and displayed in a conspicuous place where notices to employees are customarily posted at the job site or where there is employee foot traffic. If one of the above locations is also viewable by the public, it should be posted at that location. An exemption to this posting requirement is permitted if the operational time of a project is 7 calendar days or less. The signage must include the following language, verbatim:

(A) " Who does the In-Use Off-Road Regulation Apply to?

The In-Use Off-Road Diesel-Fueled Fleets Regulation (Off-Road Regulation) applies to all self-propelled off-road diesel vehicles 25 horsepower or greater and most two-engine vehicles (except on-road two-engine sweepers) owned or operated in California. This includes vehicles that are rented or leased (rental or leased fleets)."

(B) " In-Use Off-Road Regulation Requirements

Idling Limit: Vehicles cannot idle longer than five minutes. There are exceptions for vehicles that need to idle to perform work.

Labeling: Vehicles must be labeled with a CARB assigned equipment identification number (EIN). The EIN shall be white on a red background, unless the vehicle is part of a captive attainment area fleet, in which case the EIN shall be white on a green background.

The EIN shall be located in clear view on both sides of the outside of the vehicle."

ATTACHMENT H

CONTRACT AGREEMENT

CONTRACT AGREEMENT

CONSTRUCTION CONTRACT

This contract is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation, herein called "City", and **Exbon Development, Inc**, herein called "Contractor" for **JOB ORDER CONTRACT (JOC) BUILDING (North)**, Bid No. **K-25-2388-JOC-3-N**; with Adjustment Factors of **AF1, Normal Working Hours (NWH), 0.9500**; and **AF2, Other Than Normal Working Hours (OTNWH) 0.9501**.

IN CONSIDERATION of the payments to be made hereunder and the mutual undertakings of the parties hereto, City and Contractor agree as follows:

1. The following are incorporated into this contract as though fully set forth herein:
 - (a) The attached Proposal included in the Bid documents by the Contractor.
 - (b) Reference Standards listed in the Instruction to Bidders and the Supplementary Special Provisions (SSP).
 - (c) That certain documents entitled JOC BUILDING, on file in the office of the City Clerk as Document No. **11004079**, as well as all matters referenced therein.
2. The Contractor shall perform and be bound by all the terms and conditions of this Contract and in strict conformity therewith shall perform and complete in a good and workmanlike manner **JOB ORDER CONTRACT (JOC) BUILDING (North)**, Bid Number **K-25-2388-JOC-3-N**, San Diego, California.
3. For such performances, the City shall pay to Contractor the amounts set forth at the times and in the manner and with such additions or deductions as are provided for in this contract, and the Contractor shall accept such payment in full satisfaction of all claims incident to such performances.
4. No claim or suit whatsoever shall be made or brought by Contractor against any officer, agent, or employee of the City for or on account of anything done or omitted to be done in connection with this contract, nor shall any such officer, agent, or employee be liable hereunder.
5. This Contract is effective as of the date that the City Attorney signs the agreement.
6. The City shall guarantee the Contractor a minimum value of total Work (Minimum Contract Amount) of **\$5,000** up to a potential maximum value of total Work (Maximum Contract Amount) of **\$30,000,000**. The period during which new Task Orders may be issued pursuant

to this contract is 36 months or the expenditure of the **\$30,000,000**, whichever comes first. The total Contract term, including the completion of all tasks, may not exceed 5 years.

IN WITNESS WHEREOF, this Agreement is signed by the City of San Diego, acting by and through its Mayor or designee, pursuant to Municipal Code **§22.3103** authorizing such execution.

CONTRACTOR
By: 

Print Name: Hee Yang

Title: Vice President

Date: 7/18/2025

City of San Diego License No.: 2022004605

State Contractor's License No.: 863384

DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER: 100 000 7 77 0

THE CITY OF SAN DIEGO

**APPROVED AS TO FORM
Heather Ferbert, City Attorney**

By: 

By: 

Print Name: Claudia C. Abarca
Director
Purchasing & Contracting Department

Print Name: Rosy Palmucci
Deputy City Attorney

Date: January 27, 2026

Date: 2/2/2026

ATTACHMENT I

PROJECT LABOR AGREEMENT (PLA)

ORIGINAL

**CITY OF SAN DIEGO
PROJECT LABOR AGREEMENT
FOR
CITY-PROCURED CAPITAL IMPROVEMENT PROJECTS
AND OTHER PROJECTS**

DOCUMENT NO 00- 21764
FILED FEB 13 2024
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – RECITALS.....	1
ARTICLE 2 - DEFINITIONS.....	3
ARTICLE 3 - SCOPE OF THE PLA.....	6
ARTICLE 4 – UNION RECOGNITION AND EMPLOYMENT.....	10
ARTICLE 5 - UNION ACCESS AND STEWARDS.....	17
ARTICLE 6 - WAGES AND BENEFITS.....	18
ARTICLE 7 - WORK STOPPAGE AND LOCKOUTS.....	20
ARTICLE 8 – WORK ASSIGNMENTS AN DJURISDICTIONAL DISPUTES.....	26
ARTICLE 9 - MANAGEMENT RIGHTS.....	26
ARTICLE 10 – SETTLEMENT OF GRIEVANCES AND DISPUTES.....	29
ARTICLE 11 - COMPLIANCE.....	31
ARTICLE 12 – SAFETY AND PROTECTION OF PERSON AND PROPERTY.....	32
ARTICLE 13 - TRAVEL AND SUBSISTENCE.....	32
ARTICLE 14 - APPRENTICES.....	33
ARTICLE 15 – LEGAL ACTION.....	34
ARTICLE 16 - PRE-JOB CONFERENCE.....	34
ARTICLE 17 - LABOR/MANAGEMENT COLLABORATION.....	35
ARTICLE 18 - SAVINGS AND SEPARABILITY.....	35
ARTICLE 19 - WAIVER.....	36
ARTICLE 20 - AMENDMENTS.....	36
ARTICLE 21 - EFFECTIVENESS OF THE PLA.....	36
ARTICLE 22 – WORK OPPORTUNITIES PROGRAM.....	38
ARTICLE 23 - HELMETS TO HARDHATS.....	40
ATTACHMENT A – CONSTRUCTION PROJECTS NOT PROCURED BY THE CITY	
ATTACHMENT B – LETTER OF ASSENT	
ATTACHMENT C-1 – WORKFORCE DISPATCH REQUEST FORM	
ATTACHMENT C-2 – CONTRACTOR CORE WORKFORCE FORM	
ATTACHMENT D – DRUG AND ALCOHOL TESTING POLICY	
ATTACHMENT E – CITY COUNCIL POLICY NO. 100-17 “DRUG-FREE WORKPLACE/CITY CONTRACTORS”	
APPENDIX A – MEMORANDUM OF UNDERSTANDING #1 STARTUP AND COMMISSIONING	

CITY OF SAN DIEGO
PROJECT LABOR AGREEMENT
FOR
CITY-PROCURED CAPITAL IMPROVEMENT PROJECTS
AND OTHER PROJECTS

This Project Labor Agreement (“PLA”) is entered into by and between the City of San Diego (“City”), the San Diego County Building and Construction Trades Council, AFL-CIO (“Council”), and the signatory Craft Unions (“Unions”).

ARTICLE 1
RECITALS

WHEREAS, this PLA will be beneficial to the efficient delivery of City-procured projects included in the City’s adopted Capital Improvements Program budget and other projects specifically identified by the City that are of regional significance critical to the safety, economic sustainability, and quality of life of the citizens of San Diego; and

WHEREAS, the City is committed to creating programs that provide access to a skilled and trained workforce and address the needs of underserved groups who have historically experienced significant barriers to participating in employment within the construction industry. Through the construction of City-procured projects included in the City’s adopted Capital Improvements Program budget, the City aims to create economically sustainable benefits to the region, derived from employment and training programs to help individuals that are historically marginalized. The City supports policies that create careers, advance equity, and assist vulnerable individuals located in underserved communities; and

WHEREAS, the City desires the completion of the Covered Projects in a professional, safe, efficient, and economical manner, without undue delay or work stoppage; and

WHEREAS, the successful completion of Covered Projects are of the utmost importance to the San Diego region; and

WHEREAS, the Parties have pledged their full commitment to work towards a mutually satisfactory completion of the Covered Projects; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work on the Covered Projects, including workers affiliated with and/or represented by the Unions; and

WHEREAS, it is recognized that on construction projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the Parties agree that by establishing and stabilizing wages, hours, and working conditions for the workers employed on the Covered Projects, a satisfactory, continuous, and harmonious relationship will exist among labor and management that will lead to the efficient and economical completion of Covered Projects; and

WHEREAS, in recognition of the special needs of the Covered Projects and to maintain a spirit of harmony, labor-management relations, peace, and stability during the term of this PLA, the Parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes and grievances without any strikes, slowdowns, work interruptions, or disruption of Covered Projects, and the Contractors agree not to engage in any lockout; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training, and employment of Local Workers and Targeted Workers, and also recognizes the ability of local Apprenticeship Programs to provide meaningful and sustainable careers in the building and construction industry. The City, Contractors and Unions will encourage Local Workers and Targeted Workers to participate in Covered Projects through programs and procedures jointly developed to prepare and encourage such individuals for entrance into Apprenticeship Programs and formal employment on the Covered Projects through the referral programs sponsored and/or supported by the Parties to this PLA; and

WHEREAS, the Covered Projects will provide opportunities for Disadvantaged Businesses to participate as Contractors, subcontractors, or suppliers, and the Parties therefore agree that they will cooperate with all efforts of the City, the Project Labor Coordinator, Contractors and other organizations retained by the City for this purpose, to encourage and assist the participation of Disadvantaged Businesses in the Covered Projects. Specifically, Contractors and Unions understand that the City has established and quantified goals which place a strong emphasis on the utilization of Disadvantaged Businesses on Covered Projects. The City, Contractors and Unions shall participate in outreach programs and provide education and assistance to businesses not familiar with working on projects of this scope. Further, the Parties shall ensure that the provisions of this PLA do not inadvertently establish impediments to participation of such Disadvantaged Businesses, Local Workers and Targeted Workers; and

WHEREAS, it is further understood that the City shall administer the obligations under this PLA to ensure that the benefits of the PLA flow to all signatory Parties, Contractors, craft persons working under it, and residents of the San Diego region. The City may designate a Project Labor Coordinator, either from its own staff and/or a consultant acting on behalf of the City, to monitor compliance with the PLA. The Project Labor Coordinator, as the authorized representative of the City, will assist with the development and implementation of the programs referenced in this PLA, all of which are critical to fulfilling the intent and purposes of the Parties and this PLA.

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES AS FOLLOWS:

ARTICLE 2

DEFINITIONS

Capitalized terms utilized in this PLA which are not otherwise defined herein shall have the meanings ascribed to said terms below. All definitions include both singular and plural forms.

“Applicable Prevailing Wage Laws” means the prevailing wage laws, regulations, and determinations applicable to a Covered Project pursuant to the State of California Labor Code and/or the Davis-Bacon Act and related federal laws.

“Apprentice” means an apprentice properly registered in an Apprenticeship Program for the entire time they are employed on a Covered Project.

“Apprenticeship Program” means an apprenticeship program (i) approved by the State of California’s Division of Apprenticeship Standards; (ii) registered with the U.S. Department of Labor; or (iii) registered with a State Apprenticeship Agency granted authority by the U.S. Department of Labor to register apprenticeship programs for federal purposes, pursuant to 29 CFR Part 29.

“Apprenticeship Readiness Program” means an apprenticeship readiness program authorized by North America’s Building Trades Unions and the Council to teach the Multi-Craft Core Curriculum (MC3) and prepare Local Workers and Targeted Workers for entry into Apprenticeship Programs.

“City” means the City of San Diego.

“Contractor” means the Prime Contractor and any subcontractor of any tier awarded Covered Work. The term “Contractor” includes any individual, firm, partnership, corporation, owner operator, consultant or combination thereof, including joint ventures, performing Covered Work.

“Core Employee” is defined in Article 4, Section 4.6(a).

“Council” means the San Diego County Building & Construction Trades Council.

“Covered Contract” means a prime contract or subcontract awarded for performance of Covered Work.

“Covered Professional Services Agreement” means either (1) a project specific consultant agreement for an individual Covered Project that includes Covered Work or (2) the following specialized as-needed consultant agreements that include Covered Work: (a) as needed construction management services; (b) as-needed geotechnical engineering services; (c) as-needed land surveying, mapping, and digitizing services; and (d) as-needed material testing services.

“Covered Project” means either: (1) a City-procured construction project included in the City’s adopted Capital Improvements Program budget that is advertised with a City-estimated construction contract value of: (a) at least \$5 million in the first and second years of this PLA (July 1, 2024 to June 30, 2026); or (b) more than \$1 million thereafter; or (2) a construction project that is not procured by the City, but which is enumerated on Attachment A and for which a bid is advertised during the term of this PLA. The City Council may, by resolution at its sole discretion, include other construction projects for coverage under the PLA or exclude a Covered Project from coverage under the PLA.

“Covered Work” means construction work on a Covered Project, except for work that is excluded under a specific exemption in this PLA. Covered Work also includes work identified as requiring payment of prevailing wages under the State of California general prevailing wage determination for Field Surveyor and/or Building/Construction Inspector and Field Soils and Material Tester in a Covered Professional Services Agreement. The scope of work includes: making precise measurements to determine relative position or as-built locations; providing stakes, markers, or similar information for location or construction in support of construction operations; field surveying services to support work performed under the direction of a Licensed Land Surveyor or Civil Engineer; field inspections and testing for reinforced concrete, soils, structural masonry, prestressed concrete, structural steel and welding, and other construction materials used in buildings, roads, and related projects. In the event work is referred to by such terms as “quality control” or “quality assurance,” such work shall be included under the PLA if it satisfies the above criteria.

“Disadvantaged Business” means a business that is either: (1) a Disadvantaged Business Enterprise pursuant to 49 C.F.R §26.5 that has been certified by either the California Department of Transportation (“Caltrans”) or a Caltrans-approved California certifying agency; (2) a Minority Business Enterprise or a Woman Business Enterprise certified by Caltrans, a Caltrans-approved certifying agency or the California Public Utilities Commission (“CPUC”); or (3) a Small Local Business Enterprises or Emerging Local Business Enterprises certified by the City of San Diego.

“Jobs Coordinator” means an independent third-party individual, entity or employee with whom the Prime Contractor enters into a contract or employs to assist the Contractor with achieving and exceeding the Local Worker and Targeted Worker goals set forth in Section 4.5 of this PLA. The City may elect to assign City staff to perform the duties of the “Jobs Coordinator.”

“Local Worker” means an individual domiciled in San Diego County, CA or a Veteran residing anywhere. “Domiciled” has the meaning set forth in section 349(b) of the California Election Code, indicating a fixed address with intent of continued residency.

“Master Agreement” means the local master labor agreement of a Union.

“Parties” means the City, the Council, and Unions.

“Prime Contractor” means the contractor awarded a Covered Contract in privity directly with the City.

“Project Labor Coordinator” means the designee(s) of the City, either from its own staff and/or a consultant acting on behalf of the City, to monitor compliance with this PLA and assist with developing, implementing and administering the requirements, policies and programs referenced herein.

“Targeted Worker” means any individual qualifying for one or more of the following categories, at initial time of employment on the Covered Project in question:

- (a) is a Veteran;
- (b) is an Apprentice with less than fifteen percent of the work hours required for completion of the Apprenticeship Program;
- (c) has no high school diploma or general education diploma (GED);
- (d) is homeless or has been homeless within the last year;
- (e) is a former foster youth;
- (f) is a custodial single parent;
- (g) is experiencing protracted unemployment (defined as receiving unemployment benefits for at least three months);
- (h) is a current recipient of government cash or food assistance benefits;
- (i) has a documented income at or below 100 percent of the Federal Poverty Level;
- (j) has spent time in a jail, a youth correctional facility or a prison; or
- (k) is a graduate of an Apprenticeship Readiness Program approved to use the Multi-Craft Core Curriculum (MC3).

“Union” means any labor organization signatory to this PLA.

“Veteran” means a veteran or the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. §4215(a)).

“Workforce Dispatch Request Form” means the project-specific form by which Contractors request workers from the Union hiring halls on Covered Projects, an example of which is attached as Attachment C-1.

ARTICLE 3
SCOPE OF THE PLA

Section 3.1 This PLA is limited to covering all onsite construction work on Covered Projects within the scope of each Covered Contract.

Section 3.2 Exclusions. Items specifically excluded from the scope of this PLA include the following:

- (a) Work of non-manual employees, including but not limited to, superintendents, supervisors, staff engineers, quality control and quality assurance personnel (subject to definition of Covered Work), timekeepers, mail carriers, clerks, office workers, messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory, and management employees.
- (b) Off-site manufacturing, fabrication, maintenance, hauling of equipment, machinery, or materials, and hauling of recyclable metals, such as copper, steel, and aluminum, that have been separated from other materials at the Covered Project jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser as defined in Labor Code section 1720.3. However, any lay down or storage areas for equipment, materials, and manufacturing (*i.e.*, prefabrication) sites dedicated solely for the Covered Project, on-site fabrication, and the movement of materials or goods between locations on a Covered Project site are within the scope of the PLA. On-site fabrication work includes work done for the Covered Project in temporary yards or areas near the jobsite. On-site construction shall also include the site of any batch plant constructed solely to supply materials to the Covered Project. Hauling and delivery of materials used for paving, grading, and fill (which include ready-mixed concrete, soil, sand, gravel, rocks, and asphalt) onto a Covered Project jobsite are included under the PLA if the individual driver's work is integrated into the flow process of construction. Hauling of refuse from the Covered Project jobsite will also be covered by the terms and conditions of the PLA to the fullest extent allowed by law and by the prevailing wage determinations of the California Department of Industrial Relations.
- (c) All employees of the City and Project Labor Coordinator.
- (d) Employees of design teams (including, but not limited to, architects, engineers, and master planners), or any other consultants for the City (including, but not limited to, project managers, resident engineers, construction managers and their employees) and their sub-consultants,

and other employees of professional service organizations, not performing manual labor within the scope of this PLA.

- (e) Any as-needed professional services agreement that does not meet the definition of Covered Professional Services Agreements, even if the agreement includes surveying and inspection work that requires payment of prevailing wages under the State of California general prevailing wage determination for Field Surveyor and/or Building/Construction Inspector and Field Soils and Material Tester.
- (f) Any professional services agreement that was awarded prior to the effective date of the PLA. This exclusion also includes any subsequent amendment to a professional services agreement awarded prior to the effective date of the PLA that is necessary to complete a construction project.
- (g) Any work performed on or near or leading to or into a site of work covered by this PLA and undertaken by state, county, City, private utilities or other governmental bodies, or their contractors (other than work within the scope of this PLA undertaken by contractors to the City).
- (h) Work performed by employees of a manufacturer or vendor on the manufacturer's or vendor's equipment, if required by the warranty agreement in order to maintain the warranty or guarantee, and provided that the warranty agreement is the manufacturer's or vendor's usual and customary warranty agreement for such equipment and is consistent with industry practice. Any work to be excluded pursuant to this subsection shall be identified and discussed at the relevant pre-job conference. Upon request from the Council, the City shall review with the vendor whether installation or application may be performed pursuant to terms of the PLA without affecting the status of the warranty.
- (i) Specialized or technical work requiring specialized training, unique skills, or a level of specific technical experience which employees represented by the Union do not possess. At least ten (10) working days' notice shall be given to the Council before any work is performed pursuant to this exemption.
- (j) Laboratory testing work.
- (k) Non-construction support services contracted by the City, Project Labor Coordinator, or Contractor in connection with Covered Projects.

- (l) Work on emergency contracts awarded pursuant to San Diego Municipal Code (SDMC) sections 22.3108 or 22.3208.
- (m) Work on a construction project that was not procured by the City except a project that is specifically enumerated as a Covered Project on Attachment A or is subsequently included and approved by the City Council by resolution at its discretion during the effective dates of this Agreement.

Section 3.3 Awarding of Contracts.

- (a) The City has the absolute right to bid or award Covered Contracts regardless of delivery method to any Contractor notwithstanding the existence or non-existence of any agreements between such Contractor and any Union, provided only that such Contractor is willing, ready, and able to execute and comply with this PLA should such Contractor be awarded work covered by this PLA.

The solicitation of bids shall be based upon the same terms, conditions and scope of work requested of all potential bidders.

- (b) It is agreed that all Contractors awarded Covered Work shall be required to accept and be bound by the terms and conditions of this PLA. Contractors shall evidence their acceptance of this PLA by executing a Letter of Assent as set forth in Attachment B hereto. The Prime Contractor must sign and submit the Letter of Assent as a condition of award prior to the execution of a Covered Contract. No Contractor shall commence Covered Projects without first providing a copy of the signed Letter of Assent to the Project Labor Coordinator.
- (c) The City and all Contractors awarded Covered Work agree that, to the extent permitted by law and consistent with the economy and efficiency of construction and operation, they will use best efforts to purchase materials, equipment, and supplies that will not create labor strife. Under all circumstances, however, the City and Contractors shall retain the absolute right to select Contractors for the award of contracts and subcontracts on all Covered Projects.

Section 3.4 Coverage Exception. The Parties agree and understand that this PLA shall not apply to any Covered Project or portion thereof that would otherwise be covered by the PLA if a governmental agency or granting authority partially or fully funding such work determines that it will not fund the Covered Project if it is covered by this PLA. The City agrees that it will make a reasonable effort to establish the inclusion of this PLA with any governmental agency or granting authority funding a Covered Project.

Under no circumstance shall the City be required to forgo project funding due to potential application of this PLA. In such instance, the PLA and its terms shall not apply.

Section 3.5 Master Agreements.

- (a) The provisions of this PLA, including the Master Agreements (which are the local Master Agreements of the signatory Unions having jurisdiction over the work on the Covered Project, as such may be changed from time to time consistent with Section 21.3, and which are incorporated herein by reference), shall apply to Covered Work, notwithstanding the provisions of any other local, area and/or national agreement that may conflict with or differ from the terms of this PLA. Where a subject covered by the provisions of this PLA is also covered by a Master Agreement, the provisions of this PLA shall prevail. Where a subject is covered by a provision of a Master Agreement and not covered by this PLA, the provisions of the Master Agreement shall apply. Any dispute as to the applicable source between this PLA and any Master Agreement shall be resolved under the procedures established in Article 10.

- (b) This PLA, together with the referenced Master Agreements, constitutes a self-contained, stand-alone agreement and, by virtue of having become bound to this PLA, the Contractor will not be obligated to sign any other local, area, or national collective bargaining agreement as a condition of performing work within the scope of this PLA. Provided, however, that pursuant to Section 6.2, the Contractor may be required to sign a uniformly applied non-discriminatory Participation or Subscription Agreement at the request of the trustees or administrator of a trust fund established pursuant to Section 302 of the Labor Management Relations Act, and to which such Contractor may be bound to make contributions under this PLA, provided that such Participation or Subscription Agreement does not purport to bind the Contractor beyond the terms and conditions of this PLA for work on Covered Projects and/or expand its obligation to make contributions pursuant thereto. It shall be the responsibility of the Prime Contractor to have each of its Contractors of any tier sign the documents with the appropriate Union prior to the Contractor beginning work on Covered Projects.

Section 3.6 The Parties agree that this PLA will be made available to, and will fully apply to, any successful bidder for Covered Projects, without regard to whether that successful bidder performs work at other sites on either a Union or non-Union basis. This PLA shall not apply to any work of any Contractor other than that on Covered Projects specifically covered by this PLA.

- Section 3.7** Binding Signatories Only. This PLA and Letter of Assent shall only be binding on Contractors in the performance of Covered Work, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such Contractors.
- Section 3.8** Other City Work. Nothing contained herein shall be interpreted to prohibit, restrict, or interfere with the performance of any other operation, work, or function not covered by this PLA, which may be performed by the City employees or contracted for by the City for its own account, on its property, or in and around a project site.
- Section 3.9** Separate Liability. It is understood that the liability of the Contractor(s) and the liability of the separate Unions under this PLA shall be several and not joint. The Unions agree that this PLA does not have the effect of creating any joint employment status between or among the City or Project Labor Coordinator and/or any Contractor.
- Section 3.10** Completed Covered Projects. As portions of Covered Projects are completed, this PLA shall have no further force or effect on such portions of projects, except where the Contractor is directed by the City or its representatives to engage in repairs, modification and/or check-out functions required by its contract(s) with the City.
- Section 3.11** Except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, and the National Cooling Tower Agreement, all instrument calibrations work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article 7 (Work Stoppages and Lockouts), Article 8 (Work Assignments and Jurisdictional Disputes) and Article 10 (Settlement of Grievances and Disputes) of this PLA, which shall apply to such work.

ARTICLE 4

UNION RECOGNITION AND EMPLOYMENT

- Section 4.1** Recognition. The Contractor recognizes the Unions as the exclusive bargaining representative for the employees engaged in Covered Projects. Such recognition does not extend beyond the period when the employee is engaged in Covered Projects.
- Section 4.2** Contractor Selection of Employees. The Contractor shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdiction, and shall have the sole responsibility for selecting employees to be laid off, consistent with this Article.

The Contractor shall also have the right to reject any applicant referred by a Union for any lawful reason, subject to any reporting time requirements of the applicable Master Agreement; provided, however, that such right is exercised in good faith and not for the purpose of avoiding the Contractor's commitment to employ qualified workers through the procedures endorsed in this PLA.

Section 4.3 Referral Procedures.

- (a) For Unions having a job referral system contained in a Master Agreement, the Contractor agrees to comply with such system, and such system shall be used exclusively by such Contractor, except as modified by this PLA. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations that require equal employment opportunities and non-discrimination. All of the foregoing hiring procedures, including related practices affecting apprenticeship, shall be operated so as to consider the goals of the City to encourage employment of Local Workers, Targeted Workers, and utilization of Disadvantaged Businesses on the Covered Projects, and to facilitate the ability of all Contractors to meet their employment needs.
- (b) The local Unions will exert their best efforts to recruit and refer sufficient numbers of skilled craft workers to fulfill the labor requirements of the Contractor, including specific employment obligations to which the Contractor may be legally and/or contractually obligated; and to refer Apprentices as requested to develop a larger, skilled workforce. The Unions will work with the Project Labor Coordinator and others designated by the City to identify and refer competent craft persons as needed for Covered Work, and to identify individuals, particularly local residents, for entrance into Apprenticeship Programs, or participation in other identified programs and procedures to assist individuals, particularly Local Workers and Targeted Workers, in qualifying and becoming eligible for such Apprenticeship Readiness Programs and Apprenticeship Programs, all maintained to increase the available supply of skilled craft personnel for Covered Projects.
- (c) The Union shall not knowingly refer an employee currently employed by a Contractor on Covered Projects to any other Contractor.

Section 4.4 Non-Discrimination in Referral, Employment, and Contracting. The Parties and Contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, ethnicity, color, ancestry, religious creed, national origin, sexual orientation, physical disability, mental disability, medical condition, age, marital status, denial of family care leave, genetic information, gender,

gender identity, gender expression, military and veteran status, criminal records, past incarceration, previous status as a foster youth, political affiliation or membership in a labor organization in hiring and dispatching workers for the Covered Projects. The Parties and Contractors will ensure that the evaluation and treatment of their employees, members, and applicants for employment or membership are free from such discrimination, harassment, and retaliation. Further, it is recognized that the City has certain policies, programs, and goals for the utilization of Disadvantaged Businesses. The Parties and Contractors shall jointly endeavor to assure that these commitments are fully met, and that any provisions of this PLA that may appear to interfere with Disadvantaged Businesses successfully bidding for work on Covered Projects shall be carefully reviewed, and adjustments made as may be appropriate and agreed upon among the Parties, to ensure full compliance with the City's policies and commitment to its goals for the significant utilization of Disadvantaged Businesses as Contractors, vendors or suppliers on Covered Projects.

Section 4.5 Employment of Local Workers and Targeted Workers.

- (a) In recognition of the City's mission to maximize employment opportunities for Local Workers and Targeted Workers, Unions and Contractors agree that Local Workers, as well as Targeted Workers, to the extent such status is known, shall be first referred for Covered Projects. The list of qualifying zip codes for Local Workers will be posted on the City's website, as indicated in the Workforce Dispatch Request Form.
- (b) The Contractors and Unions agree to work together to achieve a goal of at least thirty percent (30%) of the total construction craft hours worked on each Covered Project being performed by Local Workers, if the Covered Project does not receive federal funding, or if local hiring requirements are pre-approved by federal funding sources. If the Covered Project receives federal funding and local hiring requirements have not been pre-approved by the federal funding source(s), the aforementioned goal will be based on the total construction craft hours worked performed by California residents and shall not consider the craft hours worked by residents of states other than California.
- (c) The Contractors and Unions agree to increase participation of Targeted Workers on each Covered Project. Strategies and outcomes for increasing such participation will be reported annually by the Project Labor Coordinator with support and assistance from Contractors and Unions.
- (d) Contractors shall attempt to satisfy the goals set forth in Section 4.5(b) by (i) assigning current craft employees who are Local Workers to perform Covered Work; (ii) if necessary, requesting referral of Local

Workers from Union hiring halls (using the Workforce Dispatch Request Form) and Apprenticeship Programs; and (iii) if the goals are not satisfied after following such steps, considering qualifying workers available from other sources, in compliance with Section 4.7. Contractors that follow these procedures in good faith and with concerted efforts to identify and retain Local Workers shall not be considered in non-compliance for failure to meet the goals set forth in Section 4.5(b).

- (e) Covered Professional Services Agreements entered into by the City for covered surveying or inspection services, which are separate and apart from the Covered Contract for a Covered Project, are exempt from the foregoing Local Worker and Targeted Worker hiring goals.
- (f) To facilitate the dispatch of Local Workers and Targeted Workers, as well as all Contractor requests for referral and dispatch of workers from the applicable Union referral system, all Contractors are required to utilize the Workforce Dispatch Request Form. When Local Workers and Targeted Workers are requested by a Contractor, the Unions will refer Local Workers, and Targeted Workers to the extent such status is known, regardless of their place in the Union hiring halls' list and normal referral procedures.
- (g) The Project Labor Coordinator shall work with the Unions and Contractors in the administration, monitoring, and reporting of the foregoing Local Worker hiring goals.

Section 4.6 **Core Employees.** This Section only applies to Contractors who are not signatory to an applicable Master Agreement.

- (a) Core Employees must meet the following eligibility requirements to qualify for employment on Covered Projects:
 - (1) A Core Employee must be a journeyperson and appear on the Contractor's active payroll for at least sixty (60) of the last one-hundred-twenty (120) working days prior to being designated as a Core Employee. The date a Core Employee is designated is the date the Core Employee list is submitted to the Project Labor Coordinator and Union prior to the Contractor commencing work; and
 - (2) A Core Employee must possess any license required by state or federal law for the Covered Projects to be performed.

- (b) Core Employee Hiring Procedure for Disadvantaged Businesses. The Parties recognize the City's interest in promoting competition and inclusion of Disadvantaged Businesses, which may not be signatory to a current Master Agreement. In order to promote participation and attract Disadvantaged Businesses to work under this PLA, and subject to the limitations set forth below, each Contractor that is a Disadvantaged Business may first employ three (3) of its Core Employees per craft on each Covered Project prior to employing an employee through the appropriate Union hiring hall. The next (fourth) employee shall be hired from the appropriate Union hiring hall and thereafter, such Contractor may employ, as needed, two (2) additional Core Employees in an alternating manner with Union referrals, up to a total of five (5) Core Employees. Thereafter, all additional employees in the affected trade or craft shall be requested and referred from the appropriate Union hiring hall.

The foregoing Core Employee hiring procedure for Disadvantaged Businesses is subject to the following limitations:

- (1) Disadvantaged Businesses are limited to utilizing the foregoing Core Employee hiring procedure on subcontracts with a value of \$500,000 or less; and
- (2) The total value of all subcontracts utilizing the foregoing Core Employee hiring procedure shall not exceed ten percent (10%) of the total value of any Covered Project; and
- (3) Each Disadvantaged Business performing work as a subcontractor is limited to using this hiring procedure for one subcontract per Covered Project.

The City may at its sole discretion modify the above Core Employee limitations for Disadvantaged Businesses. Any modifications to the limitations for Disadvantaged Businesses will be reflected in the SDMC, including but not limited to Chapter 2, Article 2, Division 36, Small and Local Business Program Administration. If there is conflict, ambiguity, or other inconsistency between any provision in this PLA and the SDMC, the SDMC will control and take precedence.

In order to assist the Project Labor Coordinator in monitoring compliance with this Section, each Prime Contractor will be responsible for tracking, reporting and providing notice to the Project Labor Coordinator describing each Disadvantaged Business subcontract that qualifies for the foregoing hiring procedure prior to work commencing.

- (c) Contractors who do not qualify for the hiring procedure for Disadvantaged Businesses set forth in Section 4.6(b), and who are not otherwise signatory to a current Master Agreement, may employ, as needed, first, a Core Employee, then an employee through a referral from the appropriate Union hiring hall, then a second Core Employee, then a second employee through the referral system, and so on until a maximum of three (3) Core Employees are employed per craft on each Covered Project. Thereafter, all additional employees in the affected trade or craft shall be requested and referred from the appropriate Union hiring hall in accordance with this Article. Contractors employing more than fifty (50) craft workers at the same time in a specific trade on a Covered Project may hire an additional two (2) Core Employees.

Section 4.6 only applies to Contractors who are not directly signatory to a current Master Agreement for the craft worker in its employ and is not intended to limit the transfer provisions of the Master Agreement of any trade. As part of this process, and in order to facilitate the contract administration procedures, as well as appropriate fringe benefit fund coverage, all Contractors shall require their Core Employees and any other persons employed other than through the referral process, to register with the appropriate Union hiring hall, if any, prior to their first day of employment working under the Covered Contract at a Covered Project site.

- (d) Prior to each Contractor performing Covered Work, the Contractor shall provide a list of Core Employees using Attachment C-2, Contractor Core Workforce Form, to the Project Labor Coordinator and the Union having jurisdiction over the work. After submitting the Core Employee list prior to commencing work, Contractors shall not make any changes or substitutions to the Core Employee list for the duration of the Covered Project, except in cases where a Core Employee is injured or otherwise cannot work on the Covered Project due to factors beyond the Contractor's control. Failure to submit the Core Employee list prior to work commencing will prohibit the Contractor from using any Core Employees until 30 calendar days after the list is provided to the Project Labor Coordinator and Union having jurisdiction over the work.
- (e) Upon request by any Party to this PLA, a Contractor hiring one or more Core Employees shall provide satisfactory proof (*i.e.*, payroll records, quarterly tax records, and such other documentation) evidencing Core Employees' qualifications as such to the Project Labor Coordinator and the Council.

- (f) In addition to the core employee provisions set forth herein, all Contractors may avail themselves of any opportunity provided for in the applicable Master Agreements to call for specific employees by name.
- (g) During any layoffs or reductions in workforce, Contractors shall layoff employees in an order and manner consistent with the Core Employee hiring procedures and maintain the required Core Employee-to-Union referral ratios required by this Section for the duration of each Covered Project.

Section 4.7 Time for Referral. If any Union's registration and referral system does not fulfill the requirements for specific classifications of covered employees (including Local Workers and Targeted Workers) requested by any Contractor within forty-eight (48) hours (excluding Saturdays, Sundays, and holidays), that Contractor may employ Core Employees without reference to the ratio requirements in Section 4.6 or use employment sources other than the Union registration and referral services, and may employ applicants from any other available source. The Contractor should promptly inform the Union of any applicants hired from other sources, and such applicants shall register with the appropriate hiring hall, if any.

Section 4.8 Lack of Referral Procedure. If a signatory local Union does not have a job referral system as set forth in Section 4.3 above, the Contractors shall give the Union equal opportunity to refer applicants in conformance with remaining provisions of this Article 4. The Contractors shall notify the Union of employees so hired, as set forth in Section 4.7.

Section 4.9 Union Membership. Employees are not required to become or remain Union members or pay Union dues or fees as a condition of performing Covered Work under this PLA. Nothing in this Section 4.9 is intended to supersede independent requirements of the applicable Master Agreements as to those Contractors otherwise signatory to such Master Agreements and as to the employees of those Contractors who are performing work on Covered Projects. Contractors otherwise signatory to such Master Agreements shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement.

Section 4.10 Foremen. The selection and number of craft foremen and/or general foremen shall be the responsibility of the Contractor, consistent with the Master Agreements. All foremen shall take orders exclusively from the designated Contractor representatives. Craft foremen shall be designated as working foreman at the request of the Contractors.

ARTICLE 5
UNION ACCESS AND STEWARDS

Section 5.1 Access to Project Sites. Authorized representatives of the Union shall have access to Covered Projects, provided that they do not interfere with the work of employees and further provided that such representatives fully comply with posted visitor, security, and safety rules.

Section 5.2 Stewards.

- (a) Each signatory local Union shall have the right to dispatch a working journey person as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.
- (b) In addition to his/her work as an employee, the steward should have the right to receive, but not to solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward should be concerned only with the employees of the steward's Contractor and not with the employees of any other Contractor. The Contractor will not discriminate against the steward in the proper performance of his/her Union duties.
- (c) When a Contractor has multiple, non-contiguous work locations at one site, the Contractor may request and the Union shall appoint such additional working stewards as the Contractor requests to provide independent coverage of one or more such locations. In such cases, a steward may not service more than one work location without the approval of the Contractor.
- (d) The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

Section 5.3 Steward Layoff/Discharge. The Contractor agrees to notify the appropriate Union twenty-four (24) hours before the layoff of a steward, except in the case of disciplinary discharge for just cause. If the steward is protected against such layoff by the provisions of the applicable Master Agreement, such provisions shall be recognized when the steward possesses the necessary qualifications to perform the remaining work. In any case in which the steward is discharged or disciplined for just cause, the appropriate Union will be notified immediately by the Contractor, and such discharge or discipline

shall not become final (subject to any later filed grievance) until twenty-four (24) hours after such notice has been given.

Section 5.4 Employees on Non-Covered Projects. On work where the personnel of the City or its contractors may be working in close proximity to the construction activities covered by this PLA on non-covered projects, the Union agrees that the Union representatives, stewards, and individual workers will not interfere with City personnel, or with personnel employed by any other employer not performing Covered Work.

ARTICLE 6

WAGES AND BENEFITS

Section 6.1 Wages. At a minimum, all employees covered by this PLA shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the Applicable Prevailing Wage Laws.

Section 6.2 Benefits.

- (a) Subject to the exception set forth below for Disadvantaged Businesses, otherwise, for all employees performing Covered Work, Contractors shall pay, at a minimum, all employee fringe benefits and other required Contractor contributions to the established Union employee benefit funds in the amounts required by Applicable Prevailing Wage Laws. In addition, the Contractors and Unions agree that only such bona fide employee benefits that accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, and training funds) shall be included in this requirement and required to be paid by the Contractor for performance of Covered Work.
- (b) Union Benefit Fund Contributions for Disadvantaged Businesses. Disadvantaged Businesses not otherwise signatory to a Master Agreement are exempt from the requirement of subsection (a) to pay fringe benefits and other required Contractor contributions on behalf of their Core Employees to the Union employee benefit funds, subject to the following exemption limitations:
 - (1) Disadvantaged Businesses are limited to utilizing the foregoing Core Employee exemption on subcontracts with a value of \$500,000 or less; and
 - (2) The total value of all subcontracts utilizing this exemption shall not exceed ten percent (10%) of the total value of any Covered Project; and

- (3) Each Disadvantaged Business performing work as a subcontractor is limited to using this exemption for one subcontract per Covered Project.

The City may at its sole discretion modify the above Union Benefit Fund Contribution limitations for Disadvantaged Businesses. Any modifications to the limitations for Disadvantaged Businesses will be reflected in the SDMC, including but not limited to Chapter 2, Article 2, Division 36, Small and Local Business Program Administration. If there is conflict, ambiguity, or other inconsistency between any provision in this PLA and the SDMC, the SDMC will control and take precedence.

Disadvantaged Businesses are required to pay all fringe benefits and other required Contractor contributions to the established Union employee benefit funds for all employees other than their Core Employees, and must comply with the Applicable Prevailing Wage Laws, including the payment of fringe benefits, for all employees performing Covered Work.

- (c) Where benefits payments are required by subsection (a), the Contractor adopts and agrees to be bound by the written terms of the applicable, legally established, Union trust agreement(s) specifying the detailed basis how payments will be made into, and benefits paid out of, such trust funds for its employees. The Contractor authorizes the parties to such trust funds to appoint trustees and successors' trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor. The Contractor obligations to the applicable Union benefit fund(s) and trust agreement(s) are limited to work performed on a Covered Project. The applicable Union benefit funds and trust agreement(s) to each Contractor are determined by the pre-job conference and Union work assignment process described in Articles 8 and 16.
- (d) Each Contractor is required to certify to the Project Labor Coordinator that it has paid all benefit contributions due and owing to the appropriate Union trust(s) and benefit funds prior to the receipt of its final payment and/or retention. Further, upon timely notification by a Union to the Project Labor Coordinator, the Project Labor Coordinator shall work with any Contractor who is delinquent in payments to assure that proper benefit contributions are made, to the extent of requesting the City and/or the Prime Contractor to withhold payments otherwise due such Contractor, until such contributions have been made or otherwise guaranteed.
- (e) Notwithstanding any other provisions, this PLA is an agreement under Section 8(f) of the National Labor Relations Act (NLRA),

which covers work performed in the building and construction industry. In addition, the work performed under this PLA qualifies for the Construction Industry Exemption under the Employee Retirement and Income Security Act of 1974 ("ERISA"), as amended as well. If any Union Pension Trust Fund ("Fund") covered by the terms and conditions of this PLA does not qualify for the ERISA Construction Industry Exemption authorized by Section 4203 (B)(1)(i), as amended, 29 U.S.C. § 1383(b)(1)(i), or has not taken the necessary steps to amend the Fund documents to qualify for the Construction Industry Exemption as authorized by Section 4203(B)(1)(ii) of ERISA, as amended, 29 U.S.C. § 1383(b)(1)(B)(ii), and to recognize the work performed under this PLA to qualify for the Construction Industry Exemption, the Contractors signatory to this PLA will not be obligated to make pension fund contributions to that Fund. In such an event, the Contractor shall pay all required amounts otherwise allocated for payment toward the non- exempt Fund to the employees' wages or other bona fide retirement plan program pursuant to Applicable Prevailing Wage Laws.

Section 6.3 Wage Premiums. Wage premiums, including, but not limited to, pay based on height of work, shift premiums, hazard pay, scaffold pay, and special skills shall not be applicable to work under this PLA, except to the extent provided for in any Applicable Prevailing Wage Laws.

Section 6.4 Compliance with Prevailing Wage Laws. All complaints regarding possible violations of Applicable Prevailing Wage Laws may be referred to the City's Prevailing Wage Program for processing, investigation and resolution, and if not resolved within thirty (30) calendar days, may be referred by any Party to the State Labor Commissioner. To facilitate compliance with Applicable Prevailing Wage Laws, each Contractor agree to provide copies of certified payroll reports, redacted only to the extent required by law, to the Unions (or to any Labor Management Cooperation Committee in which a Union or its affiliate participates) within ten (10) days of their request.

ARTICLE 7

WORK STOPPAGE AND LOCKOUTS

Section 7.1 No Work Stoppages or Disruptive Activity. The Council and the Unions signatory hereto agree that neither they, nor their respective officers, or agents or representatives, shall incite or encourage, condone or participate in any strike, walk-out, slowdown, picketing, observation of picket lines, or other activity of any nature or kind whatsoever, for any cause or dispute whatsoever with respect to or in any way related to Covered Projects, or which interferes with or otherwise disrupts Covered Projects, or with respect to or related to the City or Contractors or subcontractors, including, but not limited to, economic strikes, unfair labor practice strikes, safety strikes, sympathy

strikes, and jurisdictional strikes, whether or not the underlying dispute is arbitrable. Any such actions by the Council, or Unions, or their members, agents, representatives, or the employees they represent shall constitute a material violation of this PLA. The Council and the Union shall take all steps necessary to obtain compliance with this Article.

Section 7.2 Employee Violations. The Contractor may discharge any employee violating Section 7.1 above, and any such employee will not be eligible for rehire for performance of Covered Work.

Section 7.3 Standing to Enforce. The City and any Contractor affected by an alleged violation of this Article shall have standing and the right to enforce the obligations established herein.

Section 7.4 Expiration of Master Agreements. If a Master Agreement between a Union-signatory Contractor and one or more of the Union(s) expires before the Contractor completes the performance of a Covered Contract for a Covered Project, and the Union or the Contractor gives notice of demand for a new or modified Master Agreement, the Unions agree that they will not strike the Contractor on any Covered Project, and the Union and the Contractor agree that the expired Master Agreement will continue in full force and effect for the Covered Projects until a new or modified Master Agreement is put in place between the Union and the Contractor. If the new or modified Master Agreement between the Union and the Contractor provides that any terms of the Master Agreement shall be retroactive, the Contractor agrees to comply, consistent with the terms of this PLA and the Applicable Prevailing Wage Laws, with any retroactive terms of the new or modified Master Agreement which are applicable to employees of said Contractor that are employed on a Covered Project within seven (7) days at no cost to the City. All employees shall continue to work and to perform all their obligations with respect to Covered Projects despite the expiration of any Master Agreement. Should a Contractor engaged in Covered Projects enter into an interim agreement with the Unions for work being performed elsewhere after the expiration, and before the renewal of a local collective bargaining agreement forming the basis for a Master Agreement, such interim agreement shall be utilized by that Contractor for Covered Projects, subject to the provisions of Section 21.3.

Section 7.5 No Lock Outs. Contractors shall not cause, incite, encourage, condone or participate in any lock-out of employees with respect to Covered Projects during the term of this PLA. The term "lock-out" refers only to a Contractor's exclusion of employees in order to secure collective bargaining advantage, and does not refer to the discharge, termination, or layoff of employees by the Contractor for any reason in the exercise of rights pursuant to any provision of this PLA, or any other agreement, nor does "lock-out" include the City's decision to stop, suspend, or discontinue any Covered Projects or any portion thereof for any reason.

Section 7.6 Best Efforts to End Violations.

- (a) If a Contractor or the City contends that there is any violation of this Article, it shall, at least twenty-four (24) hours prior to invoking the procedures of Section 7.7, provide written notification to the Council of the involved Union(s) and to the Project Labor Coordinator, setting forth the facts which the Contractor contends violates this Article. The Council and the leadership of the involved Union(s) will immediately instruct, order, and use their best efforts to cause the cessation of any violation of the Article.
- (b) If the Union contends that any Contractor has violated this Article, it will notify the Contractor and the Project Labor Coordinator, setting forth the facts which the Union contends violate this Article, at least twenty-four (24) hours prior to invoking the procedures of Section 7.7. The Project Labor Coordinator shall promptly order the involved Contractor(s) to cease any violation of the Article.

Section 7.7 Expedited Enforcement Procedure. Any Party, including the City, which is an intended beneficiary of this Article, and affected Contractors, may institute the following procedures, in lieu of or in addition to any other action at law or equity, when a breach of this Article is alleged.

- (a) The party, including any affected Contractor, invoking this procedure shall notify Robert Hirsch, who has been selected by the Parties, and whom the Parties agree shall be the permanent arbitrator under this procedure, or John Kagel, as the alternate arbitrator under this procedure. If the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators as set forth in Article 10. Notice to the arbitrator shall be by the most expeditious means available, with notices to the Contractor or Union alleged to be in violation, and to the Project Labor Coordinator and Council. For purposes of this Article, written notice may be given by email, facsimile, hand delivery, or overnight mail and will be deemed effective upon receipt.
- (b) Upon receipt of said notice, the arbitrator named above or their alternate shall sit and hold a hearing within seventy-two (72) hours if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after notice has been dispatched to the Council of the involved Union(s) and/or Contractor as required by Section 7.6, above.
- (c) The arbitrator shall notify the disputing parties of the place and time chosen for this hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion,

shall not exceed twenty- four (24) hours unless otherwise agreed upon by all disputing parties. A failure of any of the disputing parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

- (d) The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation, or mitigation of such violation or to award damages, (except for damages as set forth in Section 7.8 below) which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without an opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such award shall be served on all disputing parties by hand or registered mail upon issuance.
- (e) Such award shall be final and binding on all disputing parties and may be enforced by any court of competent jurisdiction upon the filing of this PLA and all other relevant documents referred to herein above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In any judicial proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 7.7(d) of this Article, all disputing parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's award shall be sent to all disputing parties.
- (f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the Parties and Contractors to whom they accrue.
- (g) The fees and expenses of the arbitrator shall be equally divided between the disputing parties.

Section 7.8 Liquidated Damages.

- (a) If the arbitrator determines in accordance with Section 7.7 above that a work stoppage or other disruption to a Covered Project has occurred, the respondent Union(s) shall, within eight (8) hours of receipt of the Award, direct all the employees they represent on the Covered Project to immediately return to work. If the craft(s) involved do not return to work by the beginning of the next regularly scheduled shift following

such eight (8) hour period after receipt of the arbitrator's Award, and the respondent Union(s) have not complied with their obligations to immediately instruct, order, and use their best efforts to cause a cessation of the violation and return the employees they represent to work, then the non-complying Union(s) shall each pay a sum as liquidated damages to the City, and each will pay an additional sum per shift, as set forth in (c), below, for each shift thereafter on which the craft(s) has not returned to work.

- (b) If the arbitrator determines in accordance with Section 7.7 above that a lock-out has occurred, the respondent Contractor shall, within eight (8) hours after receipt of the award, return all the affected employees to work on the Covered Project, or otherwise correct the violations found by the arbitrator. If the respondent Contractor does not take such action by the beginning of the next regular scheduled shift following the eight (8) hour period, each non-complying respondent Contractor shall pay or give as liquidated damages, to the affected Union (to be apportioned among the affected employees and the benefit funds to which contributions are made on their behalf, as designated by the arbitrator) an amount equal to the total hourly wages and benefits lost for all affected employees of the Contractor on Covered Projects. In addition, the Contractor shall pay an additional sum per shift to the City, as set forth in (c), below, for each shift thereafter in which compliance by the respondent Contractor has not been completed.
- (c) The Parties agree that project delays caused by violations of this Article will cause the City to sustain damages. They agree that it would be impractical or extremely difficult to fix the amount of such damages. Therefore, the Parties agree that, in the event of a breach of this Article, the disputing party in breach shall pay to the City the sum of not less than \$10,000.00 and no more than \$20,000.00 per shift, as determined by the arbitrator, from the time the arbitrator determines that a delay has occurred until the arbitrator determines that the Covered Project is no longer disrupted. The payment, when made, shall constitute a damages remedy of the City for the delay specified, but shall not prevent the City from seeking injunctive or other monetary relief, including termination of this PLA. Payment of these sums as liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code sections 3275 or 3369, but instead, is intended to constitute liquidated damages to the City pursuant to section 1671 of the California Civil Code.

Section 7.9 Payroll and Benefit Delinquencies. Notwithstanding other provisions of this PLA, it shall not be a violation of this PLA for any Union to withhold the services of its members from a Contractor who fails to timely pay its weekly payroll in accordance with the applicable Master Agreement, or fails to make

timely payments to the applicable Union benefit funds. This Section 7.9 does not inhibit or affect responsibilities of the Council and the Union under Section 7.1 to refrain from picketing or other disruption of Covered Projects.

Prior to withholding its members' services for the Contractor's failure to meet its weekly payroll, the Union shall give at least five (5) calendar days written notice of such failure to pay by certified mail, and by facsimile or email transmission to the involved Contractor, Prime Contractor and Project Labor Coordinator. The Prime Contractor, together with the involved Contractor and affected Union, shall meet within five (5) working days after the written notice of such failure to pay was sent to attempt to resolve the payroll delinquency. If the payroll delinquency remains unresolved, then the affected Union may withhold the services of its members from the involved Contractor. Upon the payment of all monies due and then owing for wages, the Union shall direct its members to immediately return to work and the Contractor shall return all such members back to work.

Prior to withholding its members' services for the Contractor's failure to make timely payments to the applicable Union benefit funds, the Union shall give at least thirty (30) days written notice of such failure to pay by certified mail, and by facsimile or email transmission to the involved Contractor, the Prime Contractor and Project Labor Coordinator. The Prime Contractor, together with the involved Contractor and affected Union, shall meet within five (5) working days after the written notice of such failure to pay was sent to attempt to resolve the delinquency. If the delinquency remains unresolved, then the affected Union may withhold the services of its members from the involved Contractor. Upon payment by the delinquent Contractor of all monies due and then owing for employee benefit contributions, the Union shall direct its members to immediately return to work and the Contractor shall return all such members back to work.

Nothing in this section should be construed to prevent the Union having jurisdiction over the involved work from submitting a grievance under the procedures of Article 10 for any alleged or actual violations of Article 6 or referring any alleged or actual prevailing wage violation to the Project Labor Coordinator and the City labor compliance program for review and enforcement, in accordance with Section 6.4.

The Prime Contractor shall have the right to replace any delinquent Contractor in accordance with the terms and conditions of their prime contract with the City, and applicable law.

ARTICLE 8
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

Section 8.1 No Jobsite Disruption. There will be no strikes, work stoppages, picketing, sympathy strikes, slowdowns, or other interferences with the work because of jurisdictional disputes between Unions. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 8.2 All jurisdictional disputes on a Covered Project shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted by the Building and Construction Trades Department. Decisions rendered shall be final and binding and conclusive on the Contractors and Unions with regard to Covered Work.

All jurisdictional disputes shall be resolved without the occurrence of any of the activities prohibited in Article 7 (Work Stoppages and Lockouts), and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 8.2.1 If a dispute arising under this Article involves the Southwest Regional Council of Carpenters or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of Thomas Pagan, Robert Hirsch, and John Kagel, and the arbitrator's hearing on the dispute shall be held at the offices of the Council within fourteen (14) days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

Section 8.3 Failure to Comply. If any Union or Contractor fails to immediately and fully comply with the final decision rendered by the Plan, affected Union(s) or Contractor(s) may seek legal redress for such conduct, including, but not limited to, injunctive relief and/or damages.

Section 8.4 Pre-job Conference. It is required that a pre-job conference be held not later than ten (10) calendar days prior to the start of work by each Contractor for the Covered Project in accordance with the procedure described in Article 16.

ARTICLE 9
MANAGEMENT RIGHTS

Section 9.1 Contractor and City Rights. The Contractors and the City have the sole and exclusive right and authority to oversee and manage construction operations on Covered Projects without any limitations unless expressly limited by a specific

provision of this PLA. In addition to the following and other rights of the Contractors enumerated in this PLA, the Contractors expressly reserve their management rights and all the rights conferred upon them by law. The Contractor's rights include, but are not limited to, the right to:

- (a) Plan, direct, and control operations of all work; and
- (b) Hire, promote, transfer, and layoff their own employees, respectively, as deemed appropriate to satisfy work and/or skill requirements; and
- (c) Promulgate and require all employees to observe reasonable job rules and security and safety regulations; and
- (d) Discharge, suspend, or discipline their own employees for just cause; and
- (e) Utilize, in accordance with the City's approval, any work methods, procedures, or techniques, and select, use, and install any types or kinds of materials, apparatus, or equipment, regardless of source of manufacture or construction; and
- (f) Assign and schedule work at their discretion; and
- (g) Assign overtime, determine when it will be worked and the number and identity of employees engaged in such work, subject to such provisions in the applicable Master Agreement(s) requiring such assignments be equalized or otherwise made in a nondiscriminatory manner.

Section 9.2 Specific City Rights. In addition to the following and other rights of the City enumerated in this PLA, the City expressly reserves its management rights and all the rights conferred on it by law and contract. The City's rights (and those of the Project Labor Coordinator on its behalf) include, but are not limited to the right to:

- (a) Inspect any construction site or facility to ensure that the Contractor follows the applicable safety and other work requirements; and
- (b) At its sole option, terminate, delay, and/or suspend any and all portions of the Covered Projects at any time; prohibit some or all work on certain days or during certain hours of the day to accommodate the ongoing operations of the City and/or to mitigate the effect of ongoing Covered Projects on businesses and residents in the neighborhood of the Covered Project sites; and/or require any other operational or schedule changes it deems necessary, in its sole

judgment, to meet Covered Project deadlines and remain a good neighbor to those in the area of the Covered Projects. (In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the Prime Contractor and affected Unions with reasonable notice of any changes it requires pursuant to this section); and

- (c) Approve any work methods, procedures, and techniques used by Contractors whether or not these methods, procedures, or techniques are part of industry practices or customs; and
- (d) Investigate and process complaints or disagreements, through the Project Labor Coordinator.

Section 9.3 Use of Materials. There should be no limitations or restrictions by the Union upon a Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and utilization of equipment, machinery, packaging, precast, prefabricated, prefinished, or preassembled materials, tools, or other labor-saving devices, subject to the application of the California Public Contract and Labor Codes. Generally, the onsite installation or application of such items shall be performed by the craft having jurisdiction over such work.

Section 9.4 Special Equipment, Warranties and Guaranties.

- (a) It is recognized that certain equipment of a highly technical and specialized nature may be installed at Covered Project sites. The nature of the equipment, together with the requirements for manufacturer's warranties, may dictate that it be prefabricated, pre-piped, and/or pre-wired and that it be installed under the supervision and direction of the City and/or manufacturer's personnel or certified specialist contractor. The Unions agree that such equipment is to be installed without incident and without violation of this PLA.
- (b) The Parties recognize that the Contractor will initiate from time to time the use of new technology, equipment, machinery, tools, and other labor-savings devices and methods of performing Covered Projects. The Unions agree that they will not restrict the implementation of such devices or work methods. The Unions will accept and will not refuse to handle, install, or work with any standardized and/or catalogue parts, assemblies, accessories, prefabricated items, preassembled items, partially assembled items, or materials whatever their source of manufacture or construction.
- (c) If any disagreement between the Contractor and the Union concerning the methods of implementation or installation of any equipment, device, or item, or method of work arises, or whether a

particular part or pre-assembled item is a standardized or catalog part or item, the work will proceed as directed by the Contractor, and the Contractor and Union shall immediately consult over the matter. If the disagreement is not resolved, the affected Union(s) shall have the right to proceed through the procedures set forth in Article 10.

ARTICLE 10
SETTLEMENT OF GRIEVANCES AND DISPUTES

Section 10.1 Cooperation and Harmony on Site.

- (a) This PLA is intended to establish and foster continued close cooperation between management and labor. The Council shall assign a representative to the Covered Project for the purpose of assisting the local Unions, and working with the Project Labor Coordinator, together with the Contractors, to complete construction of the Covered Projects economically, efficiently, continuously, and without any interruption, delays, or work stoppages.
- (b) The City, the Contractors, Unions, and employees collectively and individually, realize the importance of maintaining continuous and uninterrupted performance of Covered Projects, and agree to resolve disputes in accordance with the grievance provisions set forth in this Article or, as appropriate, those of Article 7 or 8.
- (c) The Project Labor Coordinator shall observe the processing of grievances under this Article and Articles 7 and 8, including the scheduling and arrangements of facilities for meetings, selection of the arbitrator from the agreed-upon panel to hear the case, and any other administrative matters necessary to facilitate the timely resolution of any dispute; provided, however, it is the responsibility of the grievance parties to ensure the time limits and deadlines are met.

Section 10.2 Processing Grievances. Any questions, complaints or alleged violations of this PLA, which includes questions, complaints or alleged violations of any applicable provisions of the Master Agreements, but not alleged violations of Articles 7 or 8, shall be considered a grievance and subject to resolution under the following procedures.

Step 1.

- (a) Employee Grievances. When any employee subject to the provisions of this PLA feels aggrieved by an alleged violation of this PLA, the employee shall, through his local Union business representative or job steward, within ten (10) working days after the occurrence of the violation, give notice to the work site representative of the involved

Contractor stating the provision(s) alleged to have been violated, the details of the alleged violation and the remedy sought to resolve the matter. A grievance shall be considered null and void if notice of the grievance is not given within the ten (10) day period. A business representative of the local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within ten (10) working days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within ten (10) working days thereafter, pursue Step 2 of this grievance procedure provided the grievance is reduced to writing, setting forth the relevant information, including a short description thereof, the date on which the alleged violation occurred, and the provision(s) of the applicable agreement alleged to have been violated. Grievances and disputes settled at Step 1 shall be non- precedential except as to the grievance parties.

- (b) Union, Contractor, or City Grievances. Should a Union, a Contractor, or the City (each a “complaining party”) allege a violation of this PLA by a Party or a Contractor, and, if after conferring within ten (10) working days after the complaining party knew or should have known of the facts or occurrence giving rise to the dispute, a settlement is not reached within five (5) working days, the dispute shall be reduced to writing and processed to Step 2 in the same manner as outlined in Step 1(a) above for the processing of an employee complaint.

Step 2.

A representative of the complaining party, and a representative of any responding party to the grievance (“responding party”), shall meet within seven working days of the referral of the dispute to this second step to attempt to arrive at a satisfactory settlement thereof. The City may participate as an interested Party in any dispute brought under this Article. If the complaining party and responding parties fail to reach an agreement to the satisfaction of the complaining party, the dispute may be submitted in writing in accordance with the provisions of Step 3 within seven (7) working days after the initial meeting at Step 2.

Step 3.

- (a) If the grievance is submitted but not resolved under Step 2, the complaining party may request in writing to the Project Labor Coordinator (with copy[ies] to the other party[ies] to the grievance) within seven (7) working days after the initial Step 2 meeting, that the grievance be submitted to an arbitrator selected from the agreed-upon list below, on a rotational basis in the order listed. Those arbitrators are: (1) Barry Winograd; (2) Najeeb Khoury; (3) Andrea Dooley; (4) Robert Hirsch; and (5) John Kagel. In the event any of

these arbitrators retire or become permanently unavailable, the City and the Council shall jointly select a replacement arbitrator for the list. Any arbitrator not available to conduct the arbitration within 120 calendar days of the referral of the grievance to arbitration will be considered unavailable, and the Project Labor Coordinator shall move to the next arbitrator. The decision of the arbitrator shall be final and binding on all parties to the grievance, and the fee and expenses of such arbitrations shall be borne equally by the parties to the grievance. In cases for which the arbitrator finds a violation of this PLA, the arbitrator may order cessation of the violation and other appropriate relief, and such award shall be served on all parties to the grievance and the City. This grievance process and arbitration proceedings do not impede the ability of the City to advance any available dispute resolution processes and remedies under its prime contracts for violations thereof.

- (b) Failure of the complaining party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties to the grievance involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented and shall not have the authority to change, amend, add to, or detract from any of the provisions of this PLA.

Section 10.3 Limit on Use of Procedures. Procedures contained in this Article shall not be applicable to any alleged violation of Article 7 or 8, with a single exception that any employee discharged for violation of Section 7.2 may resort to the procedures of this Article to determine only if they were, in fact, engaged in that violation.

Section 10.4 Notice. The Project Labor Coordinator shall be notified by the involved Union(s) and Contractor(s) of all actions at Steps 2 and 3, and further, the Project Labor Coordinator or other City representative shall, upon its own request, be permitted to participate fully in all proceedings at such steps.

ARTICLE 11 **COMPLIANCE**

Section 11.1 Compliance with All Laws. The Council and all Unions, Contractors, and their employees shall comply with all applicable federal and state laws, ordinances, and regulations including, but not limited to, those relating to safety and health, employment, and applications for employment. All employees shall comply with the safety regulations established by the City, the Project Labor Coordinator, and the Contractor. Employees must promptly report any injuries or accidents to a supervisor.

ARTICLE 12
SAFETY AND PROTECTION OF PERSON AND PROPERTY

Section 12.1 Safety.

- (a) It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with all applicable safety laws and regulations and any safety rules contained herein or established by the City and the Contractor. It is understood that employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the City.
- (b) All Parties, Contractors and Contractor employees shall be bound by the safety, security, and visitor rules established by the Contractor, the Project Labor Coordinator, and the City. These rules will be published and posted. An employee's failure to satisfy his/her obligations under this Section will subject him/her to discipline, up to and including discharge.

Section 12.2 Drug and Alcohol Testing Policy. The Parties and Contractors shall adopt the Drug and Alcohol Testing Policy attached hereto as Attachment D and City Council Policy 100-17 Drug-Free Workplace/City Contractors attached hereto as Attachment E, which are the exclusive Drug and Alcohol Testing Policies for Covered Projects.

Section 12.3 Inspection. The inspection of shipments of equipment, machinery, and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice.

ARTICLE 13
TRAVEL AND SUBSISTENCE

Section 13.1 Travel expenses, travel time, subsistence allowances and/or zone rates, and parking reimbursements shall not be applicable to work under this PLA, except to the extent provided for in Applicable Prevailing Wage Laws. Parking for employees covered by this PLA shall be provided by the Contractor(s) according to the provision of the applicable Master Agreement(s).

ARTICLE 14

APPRENTICES

Section 14.1 **Importance of Training.** The Parties and Contractors recognize the need to maintain continuing support of the programs designed to develop adequate numbers of competent workers in the construction industry, the obligation to capitalize on the availability of the local work force in the area served by the City, and the opportunities to provide continuing work on Covered Projects for Local Workers and Targeted Workers. To these ends, and consistent with any laws or regulations, the Parties and Contractors will facilitate, encourage, and assist Local Workers and Targeted Workers in enrolling in and progressing through Apprenticeship Programs and/or Apprenticeship Readiness Programs in the construction industry that lead to participation in Apprenticeship Programs. The City, the Project Labor Coordinator, other City consultants, the Contractors, and the Council and Unions, will work cooperatively to identify, or establish and maintain, effective programs and procedures for persons interested in entering the construction industry and which will help prepare them for the entry into Apprenticeship Programs.

Section 14.2 **Use of Apprentices.**

- (a) The Unions and Contractors agree to cooperate in referring and employing Apprentices up to the maximum percentage allowed by the State Labor Code or applicable federal law, and the standards of each Apprenticeship Program. The minimum ratios for Apprentice to journeyman hours worked shall be in compliance, at a minimum, with the applicable provisions of the State Labor Code relating to utilization of Apprentices. The City, unless otherwise required by law, shall encourage such utilization, and, both as to Apprentices and the overall supply of experienced workers, the Project Labor Coordinator will work with the Council, Apprenticeship Programs, and Contractors to assure appropriate and maximum utilization of Apprentices and the continuing availability of both Apprentices and journeymen.
- (b) The Parties and Contractors will comply with all applicable laws and regulations in the request for dispatch and employment of Apprentices.
- (c) The Parties and Contractors agree that Apprentices will not be dispatched to Contractors working under this PLA unless there is a journeyman or other Contractor employee working on the Covered Project where the Apprentice is to be employed who is qualified to assist and oversee the Apprentice's progress through the program in which they are participating. Apprentices must be supervised and utilized in accordance with all applicable Federal and State laws.

ARTICLE 15
LEGAL ACTION

Section 15.1 **Legal Action.** The City, Council and Unions recognize the substantial legal costs (including all attorney's fees and associated disbursements) that might accrue with regard to any legal challenge over the adoption by the City of this PLA, and related to claims directly challenging the legality of this PLA, or a particular section or language that has been adopted herein. In the event of a legal challenge, the Council, on behalf of itself and affiliated Unions, agrees to seek to intervene in the legal action and actively participate in the litigation or other action to defend the legality of this PLA, or a particular section or language herein. The failure of the Council to seek to intervene in the legal action and actively participate to defend the legality of this PLA will constitute a material breach of this PLA. In the event the Council is denied leave to intervene in the legal action, the Council shall have its counsel coordinate with the City's counsel, at the Council's own expense, regarding how the Council can best support the City's legal position.

ARTICLE 16
PRE-JOB CONFERENCE

Section 16.1 Each Contractor is required to conduct a pre-job conference with the Unions not later than ten (10) calendar days prior to commencing work. The purpose of the conference will be to, among other things, convey craft manpower needs, the schedule of work for the Covered Project, the Covered Project's rules, and propose preliminary Union work assignments.

Section 16.2 The Project Labor Coordinator may work with the Prime Contractor and Council to facilitate the scheduling of all pre-job conferences, but ensuring each Contractor conducts a pre-job conference in accordance with this PLA is the responsibility of the Prime Contractor. The Contractors shall make the relevant plans and specifications available to the Unions prior to each pre-job conference.

Section 16.3 All preliminary Union work assignments shall be disclosed by each Contractor at the pre-job conference. Should there be Covered Work that was not previously assigned at a pre-job conference, or additional Covered Work be added to the scope of the Covered Project, the Contractor(s) performing such work will conduct a separate pre-job conference.

Section 16.4 Any Union in disagreement with a proposed preliminary assignment shall notify the affected Contractor of its position in writing, with a copy sent to the Project Labor Coordinator, within five (5) calendar days after the pre-job conference occurred. Within five (5) calendar days after the period allowed for Union notices of disagreement with the Contractor's proposed assignments, but prior to the commencement of any work, the Contractor shall make final

assignments in writing with copies sent to the Project Labor Coordinator and Council.

Section 16.5 A Contractor's failure to conduct a pre-job conference in accordance with this PLA is considered a breach of contract, and any affected Union may pursue a grievance under Article 10 of this PLA to seek a remedy for such a violation. Provided, however, if the Contractor has conducted a pre-job conference in accordance with this PLA, that Contractor is not required to participate in any additional pre-job conferences or mark-up meetings related to the original scope(s) of work assigned at the pre-job conference.

Section 16.6 The Project Labor Coordinator shall attend each pre-job conference. At each pre-job conference, the Project Labor Coordinator shall address the programs, goals and outcomes related to Local Worker and Targeted Worker employment, as well as the progress of implementing a work opportunities program.

ARTICLE 17

LABOR/MANAGEMENT COLLABORATION

Section 17.1 Labor/Management Collaboration Meetings. The Parties will conduct periodic labor/management cooperation meetings, which will be chaired jointly by a designee of the City and a designee of the Council. The co-chairs shall determine the frequency and scheduling of the meetings with the assistance of the Project Labor Coordinator. The purpose of the meetings shall be to promote harmonious and stable labor management relations, ensure effective and constructive communication between labor and management Parties, advance the proficiency of work in the industry, and to evaluate and ensure an adequate supply of skilled labor for all Covered Projects. The Project Labor Coordinator shall prepare reports detailing the outcomes of the Local Worker, Targeted Worker, and Apprentice utilization goals on each Covered Project, and the implementation and progress of a work opportunities program. All Parties will be invited to attend the labor/management cooperation meetings. Substantive grievances or disputes shall not be reviewed or discussed by this Committee, but shall be processed pursuant to the provisions of the appropriate Article.

ARTICLE 18

SAVINGS AND SEPARABILITY

Section 18.1 Savings Clause. It is not the intention of any Party to violate any laws governing the subject matter of this PLA. In the event any provision of this PLA is finally held or determined to be illegal or void as being in contravention of any applicable law or regulation, the remainder of the PLA shall remain in full force and effect unless the part or parts so found to be

void are wholly inseparable from the remaining portions of this PLA. If and when any provision(s) of this PLA is finally held or determined to be illegal or void by a court of competent jurisdiction, the Parties will promptly enter into negotiations concerning the substantive effect of such decision for the purposes of achieving conformity with the requirements of any applicable laws and the intent of the Parties hereto. If the legality of this PLA is challenged and any form of injunctive relief is granted by any court suspending temporarily or permanently the implementation of this PLA, then all Covered Projects that would otherwise be covered by this PLA should be continued to be bid and constructed without application of this PLA, so that there is no delay or interference with the ongoing planning, bidding, and construction of any Covered Projects.

Section 18.2 Effect of Injunctions or Other Court Orders. The Parties recognize the right of the City to withdraw, at its absolute discretion, the utilization of the PLA as part of any bid specification should a court of competent jurisdiction issue any order, or any applicable statute that could result, temporarily or permanently, in delay of the bidding, awarding, and/or construction on the project, or jeopardize project funding.

ARTICLE 19 WAIVER

Section 19.1 Waiver. A waiver of or a failure to assert any provisions of this PLA by any or all of the Parties hereto shall not constitute a waiver of such provision for the future. Any such waiver shall not constitute a modification of the PLA or change in the terms and conditions of the PLA and shall not relieve, excuse or release any of the Parties or Contractors from any of their rights, duties, or obligations hereunder.

ARTICLE 20 AMENDMENTS

Section 20.1 Amendments. The provisions of this PLA can be renegotiated, supplemented, rescinded, or otherwise altered only by mutual agreement in writing, hereafter signed by the City and the Council.

ARTICLE 21 EFFECTIVENESS OF THE PLA

Section 21.1 Term and Application.

- (a) Term of Years. This PLA shall become effective July 1, 2024, if executed by the City, Council, and Unions, and approved by the City Attorney in accordance with San Diego Charter Section 40. Any Union that fails to sign the PLA prior to approval by the City Attorney

shall not be a party to the PLA or covered by the terms of the Agreement. The PLA shall continue in full force and effect for a term of seven (7) years after the effective date.

- (b) Application to Covered Projects. The PLA will apply only to Covered Contracts for Covered Projects for which the bid advertisement date for the Covered Contract is between July 1, 2024 and seven (7) years from the effective date of the PLA, and it will continue in effect with regard to each Covered Project until all Covered Work under a Covered Contract is completed and accepted by the City, under procedures described in Section 21.2 below. The PLA shall be included in all Covered Contracts or Covered Professional Services Agreements under which Covered Work may be performed.
- (c) Extension. Either the City or the Council may provide written notice to the other not less than nine (9) months prior to the expiration of the PLA of its interest in extending the term of the PLA. Failure to provide such notice nine (9) months prior shall not preclude either the City or the Council from negotiating to extend the term of the PLA, but may impact the ability of the City Council to approve an extension prior to this PLA's expiration. Subject to adoption by the City Council and execution by the Council, the terms and conditions set forth under the PLA may not exceed five (5) years, unless approved by City ordinance. Absent mutual agreement on the extension as described above, the PLA shall expire.

Section 21.2 Turnover and Final Acceptance of Completed Work.

- (a) Construction of any phase, portion, section, or segment of Covered Projects shall be deemed complete when such phase, portion, section or segment has been turned over to the City by the Prime Contractor and the City has accepted such phase, portion, section, or segment. As areas and systems of the Covered Project are inspected and construction-tested and/or approved and accepted by the City or third parties on behalf of the City, the PLA shall have no further force or effect on such items or areas, except when the Contractor is directed by the City to engage in repairs or modifications required by its Covered Contract(s) with the City.
- (b) Notice of each final acceptance received by the Contractor will be provided to the Council with the description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch" list, and in such case, the PLA will continue to apply to each such item on the list until it is completed to the satisfaction of the City and Notice of Acceptance is given by the City or its representative to the Prime Contractor.

Section 21.3 Continuation of Master Agreements. A Master Agreement shall continue in full force and effect with regard to Covered Work as set forth in Section 3.5, until the Master Agreement is modified by parties thereto.

In such case, Contractors and Unions agree to recognize and implement all applicable changes on their effective dates as set forth in the modified Master Agreement, except as otherwise provided by this PLA; provided, however, that any such provisions negotiated in said Master Agreements will not apply to work covered by this PLA if such provisions are less favorable to the Contractor performing Covered Work than those uniformly required of Contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this PLA. Any disagreement between any Party and Contractor over application of a modified term of a Master Agreement shall be resolved under the procedures established in Article 10.

Section 21.4 Final Termination. Final termination of all obligations, rights, and liabilities, and disagreements shall occur upon receipt by the Council of a Notice from the City saying that no work remains within the scope of the PLA.

ARTICLE 22

WORK OPPORTUNITIES PROGRAM

Section 22.1 The magnitude, duration, and complexity of the Covered Projects will require large numbers of skilled craft personnel and create significant economic opportunities for Local Workers and Targeted Workers. It is therefore the understanding and intention of the Parties to use the opportunities provided by the extensive amount of work to collaborate and implement programs and procedures, which may include, for example, North America's Building Trades Unions Multi-Craft Core Curriculum (MC3) Apprenticeship Readiness Programs, to prepare persons, especially Local Workers and Targeted Workers, for entrance into Apprenticeship Programs to begin or continue their construction careers on Covered Projects and future projects. With assistance from the Project Labor Coordinator, the Contractors, the Unions and their affiliated regional and national organizations will work jointly to promptly develop and implement procedures for the identification of craft needs, the scheduling of work to facilitate the utilization of available craft workers, and the securing of services of craft workers in sufficient numbers to meet the high demands of the Covered Projects to be undertaken.

Section 22.2 The Parties support the development of increased numbers of skilled construction workers who are Local Workers and Targeted Workers to meet the labor needs of Covered Projects. Towards that end, the Parties, together with the Project Labor Coordinator, agree to develop and implement a work

opportunities program for Local Workers and Targeted Workers to maximize construction career opportunities and create a construction career pipeline to becoming employed on Covered Projects. In furtherance of the foregoing, the Council and Unions specifically agree to work with the Project Labor Coordinator to:

- (a) Collaborate with existing or newly created MC3 apprenticeship readiness programs in San Diego County to offer opportunities for Local Workers and Targeted Workers, including students, to enroll in free short-term construction apprenticeship readiness training to prepare them to enter into Apprenticeship Programs and become employed by a Contractor on Covered Projects. The Project Labor Coordinator, with the assistance of the Parties, will assist with the recruitment, career placement, and tracking of such Local Workers and Targeted Workers who graduate from these apprenticeship readiness programs; and
- (b) The Parties will cooperate and collaborate with the Project Labor Coordinator to conduct outreach to and include Local Workers and Targeted Workers from traditionally underrepresented segments of the local population in the construction craft workforce for Covered Projects; and
- (c) The Project Labor Coordinator, with input from the Council, shall produce detailed annual reports to measure and report the outcomes of the policies, requirements, and programs established in this PLA, including the achievement of Local Worker employment participation on Covered Projects; and
- (d) The Unions will partner with the Contractors and Project Labor Coordinator to conduct outreach and recruitment activities by establishing or continuing to maintain existing centers, programs, and events to facilitate the entry of Local Workers and Targeted Workers into the building and construction trades. These programs shall serve as a resource for preliminary orientation, assessment of construction aptitude, referral to MC3 apprenticeship readiness programs or Apprenticeship Programs, referral to hiring halls, and provide tailored orientation and mentoring for women; and
- (e) The Unions shall assist Local Workers with contacting the Apprenticeship Programs for the crafts and trades they are interested in. The Unions shall assist Local Workers who are seeking employment on the Covered Project and provide opportunities for Union membership by assessing their work experience and giving them credit for provable past experience in their relevant craft or trade, including experience gained working for non-Union Contractors. The Unions shall put on their rolls qualified bona fide Local Workers for employment on the Covered Project.

- (f) Jobs Coordinator. Each Contractor shall utilize the Jobs Coordinator retained by the Prime Contractor to assist with achieving and exceeding the Local Worker goals set forth in Section 4.5 of this PLA. In addition, each Contractor shall utilize the Jobs Coordinator to assist the Contractor in fulfilling its work opportunities program and “Helmets to Hardhats” goals described herein.

The City may elect to develop and implement a Jobs Coordinator program with input from the Council that will include a pre-qualification process, selection guidelines and accountability measures to ensure the Jobs Coordinators are qualified and capable of performing the Jobs Coordinator function in accordance with the intent of the PLA. Alternatively, the City may direct the Prime Contractor to develop and implement such a program. Regardless of which entity develops and implement the program, the City shall have the right to remove Jobs Coordinators from the pre-qualification list, in which case such individuals or entities shall not be eligible for further selection by Prime Contractors.

Section 22.3 Joint Subcommittee on Work Opportunities. To carry out the intent and purpose of the work opportunities program, a joint subcommittee under the PLA shall be established, jointly chaired by a designee of the City and a designee of the Council, to oversee the effective development and implementation of the programs and policies described herein, and to work with representatives of each Union’s Apprenticeship Program and representatives of the MC3 Apprenticeship Readiness Programs to maximize employment opportunities for Local Workers and Targeted Workers who reflect the diversity of the communities surrounding each Covered Project, and who may not be previously qualified for the construction career opportunities created by the Covered Projects. The joint subcommittee will meet at least quarterly to promptly facilitate its purposes in an expeditious manner as soon as this PLA becomes effective. All Unions and Prime Contractors working on active Covered Projects may be invited to attend the joint subcommittee meetings, and the joint chairs, at their discretion, may invite other community partners to attend the committee meetings. The Project Labor Coordinator will assist with the scheduling and facilitation of the joint subcommittee meetings.

ARTICLE 23

HELMETS TO HARDHATS

Section 23.1 Veterans Entry into Building and Construction Trades. The Parties recognize a desire to facilitate the entry into the building and construction trades of Veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the

services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment, and construction aptitude, referral to Apprenticeship Programs or hiring halls, counseling and mentoring, support network, employment opportunities, and other needs as identified by the Parties.

Section 23.2 Integrated Database. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of Veterans interested in working on a Covered Project and of apprenticeship and employment opportunities for a Covered Project. The Project Labor Coordinator may assist the Contractors and Unions with scheduling opportunities for outreach, recruitment, interviews, assessment and commencing with an Apprenticeship Program's application and entrance process. The Contractors and Unions agree to engage and participate in such opportunities.

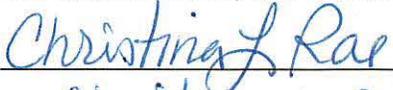
In witness whereof, the Parties have caused this Project Labor Agreement for the City to be executed as of the date and year stated below.

CITY OF SAN DIEGO

By: 
Name: Todd Gloria
Title: Mayor
Dated: July 1, 2024

APPROVED AS TO FORM

MARA W. ELLIOTT, CITY ATTORNEY

By:  for Bonny Hsu
Name: Christina L. Rae
Title: Deputy City Attorney
Dated: July 1, 2024

SAN DIEGO BUILDING AND CONSTRUCTION TRADES COUNCIL

By: Carol Kim
70D82C890EED49C

Name: Carol Kim

Title: Business Manager

Dated: June 25, 2024

SIGNATORY UNIONS
(See Attached)

SIGNATORY UNIONS

DocuSigned by:
By: Michael Patterson
Allied Workers Local 5

DocuSigned by:
By: Luis Miramontes
Boilermakers Local 92

DocuSigned by:
By: Chris Brisson
Brooklyn & Allied Crafts Local 4

DocuSigned by:
By: Jack Alvarado
Cement Masons Local 500 / Area 744

DocuSigned by:
By: [Signature]
Electrical Workers Local 569

DocuSigned by:
By: [Signature]
Elevator Constructors Local 18

DocuSigned by:
By: Ernesto Toscano
Painters & Allied Trades District Council 36

DocuSigned by:
By: Beau Coleman
Iron Workers Local 229

By: _____
Laborers Local 89

DocuSigned by:
By: Christian Betancourt
Plasterers Local 200

DocuSigned by:
By: Jose Sanchez
Plaster Tenders Local 1414

By: _____
Operating Engineers Local 12

DocuSigned by:
By: Steve Beringer
Plumbers & Pipefitters Local 230

By: _____
Operating Engineers Local 12

DocuSigned by:
By: Paul Colmenero
Roofers & Waterproofers Local 45

By: _____
Operating Engineers Local 12

DocuSigned by:
By: [Signature]
Laborers Local 1184

DocuSigned by:
By: Dave Gauthier
Sheet Metal Workers' Local 206

DocuSigned by:
By: Ed learn
Laborers Local 345

DocuSigned by:
By: Jose Estrada
Teamsters Local 166

DocuSigned by:
By: Ricardo Perez
UA Local 345

DocuSigned by:
By: SERGIO RASCON
Laborers Local 300

DocuSigned by:
By: Todd Barry on behalf of B.M. Robert Cooper
Road Sprinkler Fitters Local 669

DocuSigned by:
By: Jon Preciado
Southern California District Council of Laborers

DocuSigned by:
By: Doug Hick
Southwest Regional Council of Carpenters

DocuSigned by:
By: Victor Torres
Teamsters Local 481

SIGNATORY UNIONS

DocuSigned by:
By: Michael Patterson
Allied Workers Local 5

DocuSigned by:
By: Luis Miramontes
Boilermakers Local 92

DocuSigned by:
By: Chris Brisson
Bricklayers & Allied Crafts Local 4

DocuSigned by:
By: Jack Alvarado
Cement Masons Local 500 / Area 744

DocuSigned by:
By: [Signature]
Electrical Workers Local 569

By: _____
Elevator Constructors Local 18

By: _____
Painters & Allied Trades District Council 36

DocuSigned by:
By: Beau Coleman
Iron Workers Local 229

By: Valentine R. Macedo
Laborers Local 89

DocuSigned by:
By: Christian Betancourt
Plasterers Local 200

DocuSigned by:
By: Jose Sanchez
Plaster Tenders Local 1414

By: _____
Operating Engineers Local 12

DocuSigned by:
By: Steve Beringer
Plumbers & Pipefitters Local 230

By: _____
Operating Engineers Local 12

DocuSigned by:
By: Paul Colmenero
Roofers & Waterproofers Local 45

By: _____
Operating Engineers Local 12

By: _____
Laborers Local 1184

DocuSigned by:
By: Dave Gauthier
Sheet Metal Workers' Local 206

DocuSigned by:
By: Ed Iann
Laborers Local 345

DocuSigned by:
By: Jose Estrada
Teamsters Local 166

DocuSigned by:
By: Ricardo Perez
UA Local 345

DocuSigned by:
By: SERGIO RASCON
Laborers Local 300

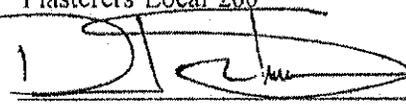
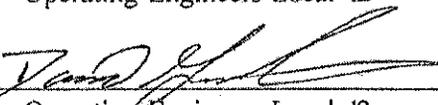
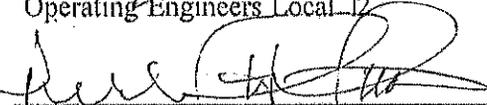
DocuSigned by:
By: Todd Barry on behalf of B.M. Robert Cooper, Jr.
Road Sprinkler Fitters Local 669

DocuSigned by:
By: Jon Preciado
Southern California District Council of Laborers

By: _____
Southwest Regional Council of Carpenters

DocuSigned by:
By: Victor Torres
Teamsters Local 481

SIGNATORY UNIONS

By: _____ Allied Workers Local 5	By: _____ Boilermakers Local 92
By: _____ Bricklayer & Allied Crafts Local 4	By: _____ Cement Masons Local 500 / Area 744
By: _____ Electrical Workers Local 569	By: _____ Elevator Constructors Local 18
By: _____ Painters & Allied Trades District Council 36	By: _____ Iron Workers Local 229
By: _____ Laborers Local 89	By: _____ Plasterers Local 200
By: _____ Plaster Tenders Local 1414	By:  Operating Engineers Local 12
By: _____ Plumbers & Pipefitters Local 230	By:  Operating Engineers Local 12
By: _____ Roofers & Waterproofers Local 45	By:  Operating Engineers Local 12
By: _____ Laborers Local 1184	By: _____ Sheet Metal Workers' Local 206
By: _____ Laborers Local 345	By: _____ Teamsters Local 166
By: _____ UA Local 345	By: _____ Laborers Local 300
By: _____ Road Sprinkler Fitters Local 669	By: _____ Southern California District Council of Laborers
By: _____ Southwest Regional Council of Carpenters	By: _____ Teamsters Local 481

ATTACHMENT A – CONSTRUCTION PROJECTS NOT PROCURED BY THE CITY

The following construction projects that are not procured by the City shall be considered Covered Projects for the purposes of this Agreement if the bid advertisement for these projects occurs during the effective dates pursuant to Section 21.1:

1. Phase III - Convention Center Expansion;
2. Phase I - Ocean Beach Pier Replacement;
3. New City Administration Building;
4. San Diego Fire Training Facility; and
5. Resource Recovery Facility at the Miramar Landfill

* In the event that the parties to the Project Labor Agreement for Construction of Pure Water Program Phase I Projects (Pure Water PLA), dated June 16, 2020, amend that agreement such that the terms of this PLA cover and apply to Pure Water Phase II projects, the terms and conditions under this PLA shall apply so long as a bid for the covered project or project work has not yet been advertised.

The City Council may elect to, by resolution, add other construction projects, not otherwise covered by this PLA, for coverage as Covered Projects.

ATTACHMENT B – LETTER OF ASSENT

To be signed by all Contractors awarded work covered by the Project Labor Agreement prior to commencing work.

[CONTRACTOR'S LETTERHEAD]

DATE

Project Labor Coordinator

Address

Address

Address

Attention: _____

Re: City of San Diego Project Labor Agreement

To Whom It May Concern:

This is to confirm **[Name of Company]** agrees to be bound by the City of San Diego's Project Labor Agreement ("PLA"), as such Agreement may from time to time be amended by the Parties or interpreted pursuant to its terms. Such obligation to be bound by the PLA shall extend to all work covered by the PLA undertaken by this Company on the Covered Project pursuant to **[Insert City Contract No. _____ and Name of Covered Project]**, and this Company shall require all of its subcontractors of whatever tier to be similarly bound for all work within the scope of the PLA by signing and furnishing to you an identical Letter of Assent prior to their commencement of work.

Sincerely,

[Name of Construction Company]

By:

[Name and Title of Authorized Executive]

[Copies of this Letter must be submitted to the Project Labor Coordinator and to the Council consistent with Article 3, Section 3.3(b)]

ATTACHMENT C-1 – WORKFORCE DISPATCH REQUEST FORM

City of San Diego Project Labor Agreement

The City of San Diego Project Labor Agreement (“PLA”) establishes a goal of at least thirty percent (30%) of the total craft hours on each Covered Project being performed by Local Workers. The City PLA also establishes a goal of at least ten percent (10%) of the total craft hours on each Covered Project being performed by Targeted Workers. The Unions and Contractors agree that Local Workers shall be first referred for Covered Projects when requested through use of this Workforce Dispatch Request Form.

C O N T R A C T O R U S E O N L Y

Please complete and fax/email this form to the applicable union to request craft workers that fulfill the hiring requirements for this project. After faxing/emailing your request, please call the local union to verify receipt and substantiate their capacity to furnish workers as specified below. Please print and retain copies of your fax or email transmission for your records.

TO:	Local Union and #	
	Email/Fax	
	Phone	
CC:	Project Labor Coordinator	
	Email/Fax	
FROM:	Contractor	
	Issued by	
	Email/Fax	
	Phone	

UNION CRAFT WORKER REQUEST

Craft Classification	Journeyman or Apprentice	Local Worker and/or Veteran	No. of Workers
	<input type="checkbox"/> JM <input type="checkbox"/> APP	*	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	*	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	*	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	*	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	*	
Total Number of Workers Requested:			

In accordance with the PLA, Article 4, Union Recognition and Employment, we are requesting the union:

* Please provide priority referral of Local Workers, based on zip code residence as described on the following page, or veteran status.

WORKER REPORTING INSTRUCTIONS:

Reporting Date:		Reporting Time:	
Reporting To:		On Site Phone:	
Project Name:			
Project Location:			
Special Instructions:			

U N I O N U S E O N L Y

Please complete the "Union Use Only" section and fax or email both pages to the requesting Contractor and Project Labor Coordinator.

Date Dispatch Received:				
Dispatch Received by:				
Date Worker(s) Dispatched:				
Name:	JM or App	Veteran	Local Worker? *	Zip Code
	<input type="checkbox"/> JM <input checked="" type="checkbox"/> APP	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> JM <input type="checkbox"/> APP	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

* PLEASE NOTE: By marking the "No" box for either the "Veteran", "Local Worker", and "Targeted Worker" categories you are certifying, on behalf of the Union, that the Union has exhausted all reasonable efforts to locate and dispatch such Veteran, Local Worker, or Targeted Worker.

** Please indicate number of the Targeted Worker category (a through k, as shown below). You may indicate multiple categories per worker.

A **Local Worker** is an individual who resides in a Disadvantaged Area or a Veteran residing anywhere. Below is a list of the Disadvantaged Area zip codes within the San Diego area.

91901	91902	91905	91906	91910	91911	91913	91914	91915	91916	91917
91910	91932	91934	91935	91941	91942	91945	91948	91950	91962	91963
91941	91978	91980	92003	92004	92007	92008	92009	92010	92011	92014
92004	92020	92021	92024	92025	92026	92027	92028	92029	92036	92037
92025	92054	92055	92056	92057	92058	92059	92060	92061	92064	92065
92057	92067	92069	92070	92071	92075	92078	92081	92082	92083	92084
92071	92091	92093	92096	92101	92102	92103	92104	92105	92106	92107
92101	92109	92110	92111	92113	92114	92115	92116	92117	92118	92119
92113	92121	92122	92123	92124	92126	92127	92128	92129	92130	92131
92124	92135	92136	92139	92140	92145	92154	92155	92161	92173	92182
92140	92536	92672								

ATTACHMENT D – DRUG AND ALCOHOL TESTING POLICY

The Parties recognize the problems that drug and alcohol abuse have created in the construction industry and the need to develop drug and alcohol abuse prevention programs. Accordingly, the Parties agree that in order to enhance the safety of the workplace and to maintain a drug and alcohol-free work environment, individual Contractors shall require applicants or employees to undergo drug and alcohol testing in accordance with this PLA and this policy, Attachment D – Drug and Alcohol Testing Policy, hereafter “PLA Drug Policy” and City Council Policy No. 100-17, “Drug-Free Workplace/City Contractors,” Attachment E. To the extent there is any conflict between the terms set forth in the PLA Drug Policy and in the City Council Policy No. 100-17, the terms set forth in City Council Policy No. 100-17 shall prevail and apply.

1. It is understood that the use, possession, transfer, or sale of illegal drugs, narcotics, or other unlawful substances, as well as being under the influence of alcohol and the possession of or consuming alcohol is absolutely prohibited while employees are on the Contractor’s job premises or while working on any jobsite in connection with work performed under the PLA.
2. No Contractor may implement a drug and alcohol testing program that does not conform in all respects to the provisions of this Policy.
3. No Contractor may implement drug and alcohol testing at any jobsite unless written notice is given to the Union setting forth the location of the jobsite, a description of the project under construction, and the name and telephone number of the Prime Contractor's project manager. Said notice shall be provided at the pre-job conferences for each Covered Project. Failure to give such notice shall make any drug and alcohol testing engaged in by the Contractor a violation of the Agreement and subject to the Article 10 grievance procedure.
4. A Contractor who elects to implement drug and alcohol testing pursuant to this Policy shall require all craft employees on the Covered Project to be tested. With respect to individuals who become employed on the Covered Project subsequent to the proper implementation of a valid drug and alcohol testing program, such test shall be administered upon the commencement of employment on the project, whether by referral from a Union Dispatch Office, transfer from another project, or another method. Individuals who were employed on the project prior to proper implementation of a valid drug and alcohol testing program may only be subjected to testing for the reasons set forth in paragraphs 5(g)(1) through 5(g)(3) and paragraphs 6(a) through 6(e) of this Policy. Refusal to undergo such testing shall be considered sufficient grounds to deny employment on the project.
5. The following procedure shall apply to all drug and alcohol testing:
 - a. The Contractor may request urine samples only. The applicant or employee shall not be observed when the urine specimen is given. An applicant or employee, at his or her sole option, shall, upon request, receive a blood test in lieu of a urine test. No employee of the Contractor shall draw blood from a bargaining unit employee, touch or handle urine specimens, or in any way become involved in the chain of custody of urine or blood specimens. A Union Business Representative, subject to the approval of the individual applicant or employee, shall be permitted to accompany the applicant or employee to the collection facility to observe the collection, bottling, and sealing of the specimen.

- b. A Contractor may request an applicant or employee promptly, within four (4) hours of the Contractor's request, perform an alcohol breathalyzer test at a certified laboratory only, and cutoff levels shall be those mandated by applicable state or federal law.
- c. The testing shall be done by a laboratory approved by the Substance Abuse & Mental Health Services Administration (SAMHSA), which is chosen by the Contractor and the Union.
- d. An initial test shall be performed using the Enzyme Multiplied Immunoassay Technique (EMIT). In the event a question or positive result arises from the initial test, a confirmation test must be utilized before action can be taken against the applicant or employee. The confirmation test will be by Gas Chromatography/Mass Spectrometry (GC/MS). Cutoff levels for both the initial test and confirmation test will be those established by SAMHSA and this Policy. Should these SAMHSA levels be changed during the course of the PLA or new testing procedures are approved, then these new regulations will be deemed as part of this existing PLA. Confirmed positive samples will be retained by the testing laboratory in secured long-term frozen storage for a minimum of one (1) year. Handling and transportation of each sample must be documented through strict chain-of-custody procedures.
- e. In the event of a confirmed positive test result, the applicant or employee may request, within forty-eight (48) hours, a sample of his/her specimen from the testing laboratory for purposes of a second test to be performed at a second laboratory, designated by the Union and approved by SAMHSA. The retest must be performed within ten (10) days of the request. Chain of custody for this sample shall be maintained by the Contractor between the original testing laboratory and the Union's designated laboratory. Retesting shall be performed at the applicant's or employee's expense. In the event of conflicting test results, the Contractor may require a third test, at the Contractor's expense.
- f. If, as a result of the above testing procedure, it is determined that an applicant or employee has tested positive, this shall be considered sufficient grounds to deny the applicant or employee his/her employment on the project.
- g. No individual who tests negative for drugs and alcohol pursuant to the above procedure and becomes employed on the project shall again be subjected to drug and alcohol testing with the following exceptions:
 - 1) Employees who are involved in industrial accidents resulting in damage to plant, property, or equipment or injury to him/her or others may be tested for drugs or alcohol pursuant to the procedures stated hereinabove.
 - 2) The Contractor may test employees following thirty (30) days' advance written notice to the employee(s) to be tested and to the applicable Union. Notice to the applicable Union shall be sent by certified mail to the affected Union with a copy to the Project Labor Coordinator. Such testing shall be pursuant to the procedures stated hereinabove.
 - 3) The Contractor may test an employee where the Contractor has reasonable cause to believe that the employee is impaired from performing his/her job. Reasonable cause shall be defined as being aberrant or unusual behavior, the type of which is a recognized and accepted symptom of impairment (e.g., slurred speech, unusual lack of muscular coordination). Such behavior must be actually observed by at least two (2) persons, one (1) of whom shall be a supervisor who has been trained to recognize the symptoms of drug and alcohol abuse or impairment and the other of whom shall be the Job Steward. If the Job Steward is unavailable

11. The Contractor agrees that results of urine and blood tests performed hereunder will be considered medical records held confidential to the extent permitted or required by law. Such records shall not be released to any persons or entities other than designated Contractor representatives and the applicable Union. Such release to the applicable Union shall only be allowed upon the signing of a written release by the employee, and the information contained therein shall not be used to discourage the employment of the individual applicant or employee on any subsequent occasion.
12. Employees who seek voluntary assistance for substance abuse may not be disciplined for seeking such assistance. Requests from employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Employees enrolled in substance abuse programs will be subject to all Contractor rules, regulations, and job performance standards with the understanding that an employee enrolled in such a program is receiving treatment for an illness.
13. The Contractor shall indemnify and hold the Union harmless against any and all claims, demands, suits, or liabilities that may arise out of the application of this Policy.
14. This Policy shall constitute the only Policy in effect between the Parties concerning drug and alcohol abuse, prevention, and testing. Any modifications thereto must be accomplished pursuant to collective bargaining negotiations between the Parties.

SPECIMEN REPORTING CRITERIA

Initial Test Analyte	Initial Test Cutoff ¹	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites (THCA) ²	50 ng/ml ³	THCA	15 ng/ml
Cocaine metabolite (Benzoylecgonine)	150 ng/ml ³	Benzoylecgonine	100 ng/ml
Codeine/ Morphine	2000 ng/ml	Codeine Morphine	2000 ng/ml 2000 ng/ml
Hydrocodone/ Hydromorphone	300 ng/ml	Hydrocodone Hydromorphone	100 ng/ml 100 ng/ml
Alcohol	0.02%	Ethanol	0.02%
Oxycodone/ Oxymorphone	100 ng/ml	Oxycodone Oxymorphone	100 ng/ml 100 ng/ml
6-Acetylmorphine	10 ng/ml	6-Acetylmorphine	10 ng/ml
Phencyclidine	25 ng/ml	Phencyclidine	25 ng/ml
Amphetamine/ Methamphetamine	500 ng/ml	Amphetamine Methamphetamine	250 ng/ml 250 ng/ml
MDMA ⁴ /MDA ⁵	500 ng/ml	MDMA MDA	250 ng/ml 250 ng/ml
Initial Test Analyte	Initial Test Cutoff	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Barbiturates	300 ng/ml	Barbiturates	200 ng/ml
Benzodiazepines	300 ng/ml	Benzodiazepines	300 ng/ml
Methadone ⁶	300 ng/ml	Methadone	100 ng/ml
Methaqualone	300 ng/ml	Methaqualone	300 ng/ml
Propoxyphene	300 ng/ml	Propoxyphene	100 ng/ml

¹ For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

² An immunoassay must be calibrated with the target analyte, 9-tetrahydrocannabinol-9- carboxylic acid (THCA).

³ **Alternate technology (THCA and benzoylecgonine):** The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (i.e., 15 ng/ml for THCA, 100 ng/ml for benzoylecgonine).

⁴ Methylendioxyamphetamine (MDMA)

⁵ Methylendioxyamphetamine (MDA)

⁶ Employees with a prescription for methadone who are using the medication as prescribed, and are not impaired and can safely perform their work, will not be considered to have violated this Policy.

**MEMORANDUM OF UNDERSTANDING REGARDING
"QUICK" DRUG SCREENING TESTS PURSUANT TO
ATTACHMENT D – DRUG AND ALCOHOL TESTING POLICY**

It is hereby agreed between the Parties hereto that a Contractor who has otherwise properly implemented drug and alcohol testing, as set forth in the Policy, shall have the right to offer an applicant or employee a "quick" drug screening test. This "quick" screen test shall consist either of the "ICUP" urine screen or similar test or an oral screen test. The applicant or employee shall have the absolute right to select either of the two "quick" screen tests, or to reject both and request a full drug test.

An applicant or employee who selects one of the "quick" screen tests, and who passes the test, shall be put to work immediately. An applicant or employee who fails the "quick" screen test, or who rejects the "quick" screen tests, shall be tested pursuant to the procedures set forth in the Policy. The sample used for the "quick" screen test shall be discarded immediately upon conclusion of the test. An applicant or employee shall not be deprived of any rights granted to them by the Policy as a result of any occurrence related to the "quick" screen test.

ATTACHMENT E – CITY COUNCIL POLICY NO. 100-17

“DRUG-FREE WORKPLACE/CITY CONTRACTORS”

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

CURRENT

SUBJECT: DRUG-FREE WORKPLACE/CITY CONTRACTORS
POLICY NO.: 100-17
EFFECTIVE DATE: May 20, 1991

BACKGROUND:

The issue of substance abuse, the misuse of both legal and illegal drugs, has been identified as a major problem. It is well documented that substance abuse in the workplace can negatively impact employee performance, worker safety and the safety of the general public.

PURPOSE:

It is the intent of the City Council that the City of San Diego take a leadership role in addressing the issue of drug abuse in the workplace. It is the purpose of this policy to establish the requirement that all City construction contractors, consultants, grantees and providers of non-professional services agree to comply with this Drug-Free Workplace Policy.

POLICY:

Section 1. Definitions

- A. “Drug-free workplace” means a site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.
- B. “Employee” means the employee of a contractor directly engaged in the performance of work pursuant to a contract as described in Section 2.
- C. “Controlled substance” means a controlled substance in schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. Sec. 812).
- D. “Contractor” means the department, division, or other unit of a person or organization responsible to the contractor for the performance of a portion of the work under the contract.

Section 2. City Contractor Requirements

- A. Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all of the following:
 - (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation,

possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

- (2) Establishing a drug-free awareness program to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace.
 - (b) The person's or organization's policy of maintaining a drug-free workplace.
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (d) The penalties that may be imposed upon employees for drug abuse violations.
 - (3) Posting the statement required by subdivision (1) in a prominent place at contractors main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.
- B. Contractors shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of subdivisions (1) through (3) inclusive of Section 2A. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.

HISTORY:

Adopted by Resolution R-277952 05/20/1991

APPENDIX A –

MEMORANDUM OF UNDERSTANDING #1

STARTUP AND COMMISSIONING

The Parties and Contractors agree that work covered by this PLA on Covered Projects includes all onsite physical craft work that is part of startup and commissioning, including, but not limited to, system flushes and testing, loop checks, rework and modifications, and functional and operational testing up to and including the final running test. It is understood that the City's personnel and/or its representatives, together with the manufacturer's and/or vendor's representatives, and/or project operating personnel may supervise and direct the startup, commissioning, rework, and modification activity, and that the onsite physical craft work is typically performed as part of a joint effort with these representatives and personnel. A manufacturer or its representatives may perform industry standard startup and commissioning work to satisfy its guarantee or warranty on a piece of equipment, and such work will be exempt from the PLA to the extent the work is excluded by Section 3.2(g) and/or Section 3.2(h).

CERTIFICATIONS AND FORMS

The Bidder, by submitting its electronic bid, agrees to and certifies under penalty of perjury under the laws of the State of California, that the certifications, forms and affidavits submitted as part of this bid are true and correct.

BIDDER'S GENERAL INFORMATION

To the City of San Diego:

Pursuant to "Notice Inviting Bids", specifications, and requirements on file with the City Clerk, and subject to all provisions of the Charter and Ordinances of the City of San Diego and applicable laws and regulations of the United States and the State of California, the undersigned hereby proposes to furnish to the City of San Diego, complete at the prices stated herein, the items or services hereinafter mentioned. The undersigned further warrants that this bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

The undersigned bidder(s) further warrants that bidder(s) has thoroughly examined and understands the entire Contract Documents (plans and specifications) and the Bidding Documents therefore, and that by submitting said Bidding Documents as its bid proposal, bidder(s) acknowledges and is bound by the entire Contract Documents, including any addenda issued thereto, as such Contract Documents incorporated by reference in the Bidding Documents.

**NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID UNDER 23
UNITED STATES CODE 112 AND PUBLIC CONTRACT CODE 7106**

State of California

County of San Diego

The bidder, being first duly sworn, deposes and says that he or she is authorized by the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that 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, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

CONTRACTOR CERTIFICATION

DRUG-FREE WORKPLACE

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the WHITEBOOK, Section 5-1.3, "Drug-Free Workplace", of the project specifications, and that;

This company_has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of subdivisions a) through c) of the policy as outlined.

CONTRACTOR CERTIFICATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the Americans With Disabilities Act (ADA) outlined in the WHITEBOOK, Section 5-1.2, "California Building Code, California Code of Regulations Title 24 and Americans with Disabilities Act", of the project specifications, and that:

This company has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

CONTRACTOR CERTIFICATION

CONTRACTOR STANDARDS – PLEDGE OF COMPLIANCE

I declare under penalty of perjury that I am authorized to make this certification on behalf of the company submitting this bid/proposal, that as Contractor, I am familiar with the requirements of City of San Diego Municipal Code § 22.3004 regarding Contractor Standards as outlined in the WHITEBOOK, Section 5-1.4, (“Contractor Standards and Pledge of Compliance”), of the project specifications, and that Contractor has complied with those requirements.

I further certify that each of the Contractor’s subcontractors has completed a Pledge of Compliance attesting under penalty of perjury of having complied with City of San Diego Municipal Code § 22.3004.

CONTRACTOR CERTIFICATION

EQUAL BENEFITS ORDINANCE CERTIFICATION

I declare under penalty of perjury that I am familiar with the requirements of and in compliance with the City of San Diego Municipal Code § 22.4300 regarding Equal Benefits Ordinance.

CONTRACTOR CERTIFICATION

EQUAL PAY ORDINANCE CERTIFICATION

Contractor shall comply with the Equal Pay Ordinance (EPO) codified in the San Diego Municipal Code (SDMC) at section 22.4801 through 22.4809, unless compliance is not required based on an exception listed in SDMC section 22.4804.

Contractor shall require all of its subcontractors to certify compliance with the EPO in their written subcontracts.

Contractor must post a notice informing its employees of their rights under the EPO in the workplace or job site.

By signing this Contract with the City of San Diego, Contractor acknowledges the EPO requirements and pledges ongoing compliance with the requirements of SDMC Division 48, section 22.4801 et seq., throughout the duration of this Contract.

CONTRACTOR CERTIFICATION

IN-USE OFF-ROAD DIESEL FUELED FLEET REGULATION (OFF-ROAD REGULATION) COMPLIANCE

I hereby certify that Contractor is familiar with the requirements 13 CCR 2449, 2449.1, and 2449.2, as well as Attachment G, In-Use Off-Road Diesel Fueled Fleet Regulation (Off-Road Regulation) Compliance (CARB), and that Contractor shall comply with these requirements.

I further certify that each of the Contractor's listed subcontractors is familiar with these requirements and shall also comply.

CONTRACTOR CERTIFICATION

PRODUCT ENDORSEMENT

I declare under penalty of perjury that I acknowledge and agree to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

ELECTRONICALLY SUBMITTED FORMS

FAILURE TO FULLY COMPLETE AND SUBMIT ANY OF THE FOLLOWING FORMS WILL DEEM YOUR BID NON-RESPONSIVE.

PLANETBIDS WILL NOT ALLOW FOR BID SUBMISSIONS WITHOUT THE ATTACHMENT OF THESE FORMS

The following forms are to be completed by the bidder and submitted (uploaded) electronically with the bid in PlanetBids.

- A. CONTRACTOR'S CERTIFICATION OF PENDING ACTIONS**
- B. MANDATORY DISCLOSURE OF BUSINESS INTERESTS FORM**
- C. DEBARMENT AND SUSPENSION CERTIFICATION FOR PRIME CONTRACTOR**

CONTRACTOR'S CERTIFICATION OF PENDING ACTIONS

As part of its bid or proposal (Non-Price Proposal in the case of Design-Build contracts), the Bidder shall provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

CHECK ONE BOX ONLY.

- The undersigned certifies that within the past 10 years the Bidder has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers.
- The undersigned certifies that within the past 10 years the Bidder has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

DATE OF CLAIM	LOCATION	DESCRIPTION OF CLAIM	LITIGATION (Y/N)	STATUS	RESOLUTION/REMEDIAL ACTION TAKEN

Contractor Name: _____ Exbon Development, Inc. _____

Certified By: _____ Hee Yang _____ Title _____ Vice President _____
Name

Signature _____ Date _____ 7/10/2025 _____

USE ADDITIONAL FORMS AS NECESSARY

Mandatory Disclosure of Business Interests Form

BIDDER/PROPOSER INFORMATION

Legal Name		DBA	
Exbon Development, Inc.			
Street Address	City	State	Zip
13831 Newhope Street, Garden Grove		CA	92843
Contact Person, Title		Phone	Fax
Hee Yang, Vice President		(714) 539-2222	(714) 539-2223

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103).

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Name	Title/Position
Jae K. Jung	President, Secretary, Treasurer
City and State of Residence	Employer (if different than Bidder/Proposer)
Anaheim Hills, CA	
Interest in the transaction	
100%	

Name	Title/Position
Hee Yang	Vice President
City and State of Residence	Employer (if different than Bidder/Proposer)
Yorba Linda, CA	
Interest in the transaction	
0%	

*** Use Additional Pages if Necessary ***

Under penalty of perjury under the laws of the State of California, I certify that I am responsible for the completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Mayor or Designee within five (5) business days if, at any time, I learn that any portion of this Mandatory Disclosure of Business Interests Form requires an updated response. Failure to timely provide the Mayor or Designee with written notice is grounds for Contract termination.

Hee Yang, Vice President

7/10/2025

Print Name, Title
Signature
Date

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Mandatory Disclosure of Business Interests Form is submitted.

**DEBARMENT AND SUSPENSION CERTIFICATION
PRIME CONTRACTOR
FAILURE TO COMPLETE AND SUBMIT AT TIME OF BID SHALL RENDER BID NON-RESPONSIVE**

EFFECT OF DEBARMENT OR SUSPENSION
To promote integrity in the City's contracting processes and to protect the public interest, the City shall only enter into contracts with responsible bidders and contractors. In accordance with San Diego Municipal Code §22.0814 (a): <i>Bidders</i> and <i>contractors</i> who have been <i>debarred</i> or <i>suspended</i> are excluded from submitting bids, submitting responses to requests for proposal or qualifications, receiving <i>contract</i> awards, executing <i>contracts</i> , participating as a <i>subcontractor</i> , employee, agent or representative of another <i>person</i> contracting with the City.

As part of its bid or proposal (Non-Price Proposal in the case of Design-Build contracts), the Bidder shall provide to the City a list of Names of the Principal Individual owner(s).

The names of all persons interested in the foregoing proposal as Principals are as follows:

NAME	TITLE
Jae K. Jung	President, Secretary, Treasurer
Hee Yang	Vice President

IMPORTANT NOTICE: If Bidder or other interested person is a corporation, state secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if Bidder or other interested person is an individual, state first and last names in full.

The Bidder, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Contractor Name: Exbon Development, Inc.

Certified By Hee Yang Title Vice President

Name



Signature

Date 7/10/2025

NOTE: Providing false information may result in criminal prosecution or administrative sanctions.

Bid Results

Bidder Details

Vendor Name Exbon Development, Inc.
Address 13831 Newhope St.
Garden Grove, California 92843
United States
Respondee Hee Yang
Respondee Title Sr. Estimator
Phone 714-539-2222
Email bid@exbon.com
Vendor Type Asian, MALE, CADIR
License # 863384
CADIR 1000007770

Bid Detail

Bid Format Electronic
Submitted 07/10/2025 12:37 PM (PDT)
Delivery Method
Bid Responsive
Bid Status Submitted
Confirmation # 438097

Respondee Comment

Buyer Comment

Attachments

File Title	File Name	File Type
K-25-2388-JOC-3_Contractor's Certification of Pending Actions_Exbon Development.pdf	K-25-2388-JOC-3_Contractor's Certification of Pending Actions_Exbon Development.pdf	Contractor's Certification of Pending Actions
K-25-2388-JOC-3_Mandatory Disclosure of Business Interests Form_Exbon Development.pdf	K-25-2388-JOC-3_Mandatory Disclosure of Business Interests Form_Exbon Development.pdf	Mandatory Disclosure of Business Interests Form
K-25-2388-JOC-3_Debarment and Suspension_Exbon Development.pdf	K-25-2388-JOC-3_Debarment and Suspension_Exbon Development.pdf	Prime Contractor - Debarment and Suspension

Line Items

Discount Terms No Discount

Item #	Item Code	Type	Item Description	UOM	QTY	Unit Price	Line Total	Response	Comment
Main Bid							\$0.9500		
1			Adjustment Factor 1, Normal Working Hours	ea	0.8	\$0.9500	\$0.7600	Yes	
2			Adjustment Factor 2, Non-Normal Working Hours	ea	0.2	\$0.9501	\$0.1900	Yes	

Line Item Subtotals

Section Title	Line Total
Main Bid	\$0.9500
Grand Total	\$0.9500

ADDITIONAL FUNDING AGENCY REQUIREMENTS – FOR REFERENCE ONLY

SUBCONTRACTING PARTICIPATION REQUIREMENTS – PER TASK

1. SUBCONTRACTING PARTICIPATION PERCENTAGES:

- 1.1. The City affirms that in any contract entered into pursuant to this advertisement, DBE will be afforded full opportunity to submit Bids in response to this invitation.
- 1.2. This Federally assisted project includes subcontracting participation percentages for DBE participation. DBE goal commitments and Good Faith Efforts (GFE) shall be made prior to bidding. DBE commitments and GFE made after the Bid opening will not be considered for the Award of Contract.
- 1.3. This project is subject to the federal equal opportunity regulations and the following requirements. The City reserves the right to audit the Contractor's compliance with the federal requirements set forth below.
- 1.4. The following are federally subcontracting participation percentages. For the purpose of achieving the subcontractor participation percentage, Additive or Deductive Alternates and Type II Allowance Bid Items will not be included in the calculation.

FAA or FHWA- CERTIFIED DBE Bidder(s) shall meet the DBE goal or have a good faith effort. They receive no credit toward the goal for their own DBE status. The City has determined that the following goals shall apply to this project:

DBE Percentage **X.X%**

The Contractor shall meet the Project specific goals for DBE's as outlined in the Specifications or satisfy GFE documentation requirements.

Environmental Protection Agency (EPA) - In accordance with EPA's Program for Utilization of Small, Minority Disadvantaged and Women Business Enterprises in procurement under Federal assistance programs, the Contractor agrees to the applicable "fair share" objectives negotiated with EPA as follows:

California State Water Resources Control Board - Clean Water State Revolving Fund (CWSRF):

		MBE*	WBE*
1.	Construction	2%	1%
2.	Supplies	1%	1%
3.	Services	1%	1%
4.	Equipment (combined in above)	1%	1%

Note: MBEs and WBEs shall be certified by EPA, SBA, DOT or by state, local, Tribal, or private entities whose certification criteria match EPAs in

order to be counted toward MBE/WBE accomplishments. MBEs and WBEs are a part of the larger universe of DBEs.

California Department of Public Health Service - Safe Drinking Water State Revolving Fund (SDWSRF):

	MBE*	WBE*
1. Construction	11%	4%
2. Supplies	2%	2%
3. Services	4%	2%
4. Equipment (combined in above)	2%	1%

Note: MBEs and WBEs must be certified by EPA, SBA, DOT or by state, local, Tribal, or private entities whose certification criteria match EPAs in order to be counted toward MBE/WBE accomplishments. MBEs and WBEs are a part of the larger universe of DBEs.

Federal Emergency Management Agency, DHS (FEMA), Department of Interior (DOI), Department of Energy (DOE), and Department of Housing and Urban Development (HUD):

1. Small Disadvantaged Business (SDB):	5%
2. Women-Owned Small Business (WoSB):	5%
3. HUBZone Small Business (HubZone):	3%
4. Service Disabled Veteran-owned Small Business (SDVoSB):	3%

WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) PROGRAM (EPA REQUIREMENTS):

	MBE*	WBE*
1. Construction	2%	1%
2. Supplies	1%	1%
3. Services	1%	1%
4. Equipment (combined in above)	1%	1%

Note: MBEs and WBEs must be certified by EPA, SBA, DOT or by state, local, Tribal, or private entities whose certification criteria match EPAs in order to be counted toward MBE/WBE accomplishments. MBEs and WBEs are a part of the larger universe of DBEs.

****THE AS-NEEDED INFORMATION IN THIS ATTACHMENT IS PROVIDED AS A COURTESY TO BIDDERS. PREVAILING WAGE RATES SHALL STILL APPLY AND SHALL BE BASED ON THE TASK REQUEST FOR PROPOSAL DATE****

1. Notice of Requirements for Affirmative Action to Ensure EEO (Executive Order 111246)..
1. Water Infrastructure Finance and Innovation Act (WIFIA) and State Revolving Fund (SRF) Programs
2. Non-discrimination Provisions for Federally Assisted Construction Contracts and Projects
3. Equal Opportunity Clauses.....
4. Standard Federal Equal Employment Specifications
4. Federal Equal Employment Specifications Under the WIFIA Program.....
5. Violation of Breach of Requirements
6. Monthly Employment Utilization Reports
7. Records of Payments to DBE.....
8. Federal Wage Requirements for Federally Funded Projects.....
9. State Requirements for Contracts Subject to State Prevailing Wage Requirements.....
10. Wage Rates
10. Prevailing Wage Rates
10. Davis-Bacon Wage Rates and Provisions Under The WIFIA Program.....
11. Section 3 of the Housing and Urban Development Act of 1968.....
12. Federal Labor Standards Provisions (CDBG).....
13. Federal Labor Standards Provisions (All other Federal)
14. Agency Specific Provisions.....
14. Agency Specific Provisions Disadvantaged Business Enterprises Provisions.....
15. DBE Potential Resources Centers
16. Good Faith Effort Documentation Submittals
17. Forms
- FORM 4500-2 DBE Subcontractor Participation Form.....
- FORM 4500-3 DBE Subcontractor Performance Form
- FORM 4500-4 DBE Subcontract Utilization Form
- EPA FORM 5700-52A MBE/WBE Utilization Forms
- CWSRF Form 1 Good Faith Effort List of Subcontractors Solicited.....
- CWSRF Form 2 Good Faith Effort Bids Received List.....
- CWSRF Form 3 DBE / Contractor Certification
- CWSRF Form 4 DBE Prime Contractor / Recipient Selected
- CWSRF Form 5 Summary of Bids Received from Subcontractors, Suppliers and Brokers ..
- SDWSRF DBE Information Form
- SDWSRF Verification of Qualifications
- Form AA61 List of Work Made Available.....
- Form AA62 Summary of Bids Received.....
- Form AA63 Good Faith Effort List of Subcontractors Solicited
- Form AA64 MBE/WBE Information
- Form AA65 Section 3 Outreach Methods
- Form AA66 MBE/WBE Information No Change Certification
- Form AA67 Section 3 Worker Certification
- Form AA68 Section 3 Project Closeout Report Final Report – Utilization of DBE, First Tier Subcontractors.....

Monthly DBE/UDBE Trucking Verification
 Exhibit 15-G Local Agency Bidder DBE Commitment (Construction Contracts.....
 Subcontracting Request
 Exhibit 15-H DBE Information – Good Faith Efforts
 Disadvantaged Business Enterprises (DBE) Certification Status Change FHWA PR-1391....

17. Appendix DBE Good Policy Statement For FAA Contracts
18. Certificate of Insurance (Worker’s Compensation)
19. Insurance Endorsement (Worker’s Compensation)
20. Certificate of Insurance (Liability)
21. Insurance Endorsement (Liability).....
22. Certificate of Compliance
23. Notice of Materials to be Used
24. Caltrans Standard Specification Division 1 – General Provisions.....
25. Caltrans Standard Specification (Additional Divisions).....

FOR REFERENCE ONLY

FOR REFERENCE ONLY

IN THE EVENT THAT THESE REQUIREMENTS CONFLICT WITH THE CITY'S GENERAL EOC REQUIREMENTS, THE FUNDING AGENCY'S REQUIREMENTS WILL CONTROL.

1. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246).

1.1. The goal and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, as follows:

	<u>Goal</u>
1. Minority Participation:	16.9%
2. Female Participation:	6.9%

1.2. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the Work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both federally involved and non-federally involved Work.

1.3. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals.

1.4. The hours of minority and female employment and training shall be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

1.5. The Contractor shall provide written notification to the Director the Office of Federal Contract Compliance Programs within 10 Working Days of award of any Subcontract in excess of \$10,000 at any tier for Work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the subcontract is to be performed. The "covered area" is the City of San Diego.

2. NONDISCRIMINATION PROVISIONS FOR FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND PROJECTS:

2.1. 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 shall 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 setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by, 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 worker with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advertising the said labor union or workers' representatives 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, or 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 the administering agency 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 the said 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 or federally assisted construction 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 portion of the sentence immediately preceding Paragraph 1 and 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. EQUAL OPPORTUNITY CLAUSES:

3.1. The following equal opportunity clauses are incorporated by reference herein:

1. The equal opportunity clause located 41 CFR 60.1.4(a), which specifies the obligations imposed under Executive Order 11246.
2. The equal opportunity clause located at 41 CFR 60-741.5, which contains the obligations imposed by Section 503 of the Rehabilitation Act of 1973.
3. The "Equal Opportunity Clause" (Resolution No. 765092) filed on December 4, 1978, in the Office of the City Clerk, San Diego, California and incorporated in the "Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - Document No. 769023, filed September 11, 1984, in the Office of the City Clerk, San Diego, California) is applicable to all non-exempt City construction contracts and subcontracts of \$2,000 or more.
4. Age Discrimination Act of 1975, Pub. L. 94-135.
5. Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.
6. Section 13 of the Federal Water Pollution Control Acts Amendments of 1972, Pub. L. 92-5200 (the Clean Water Act).
7. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (Executive Orders 11914 and 11250).
8. Women's Minority Business Enterprises, Executive Orders 11625, 12138 and 12432.

9. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

4. STANDARD FEDERAL EQUAL EMPLOYMENT SPECIFICATIONS:

- 4.1. The Contractor is required to comply with the 16 “Standard Federal Equal Employment Specifications” located at 41 CFR 60-4.3 for federal and federally-assisted construction contracts in excess of \$10,000, set forth below.
- 4.2. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of Contractor’s compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative actions steps at least as extensive as the following:
 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor’s employees are assigned to work. The Contractor, where possible, will assign 2 or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor’s obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations’ responses.
 3. Maintain a current file of the names, addresses and telephone numbers of each minority and female walk-in applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor’s efforts to meet its obligations.

5. Develop on-the-job training opportunities, participate in training programs for the area, or both which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 1 above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreements; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignments, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, foreman, etc., prior to the initiation of Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and dispositions of the subject matter.
8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

5. VIOLATION OR BREACH OF REQUIREMENTS:

- 5.1. If at any time during the course of the Contract there is a violation of the Affirmative Action or Equal Employment Opportunity requirements by the Contractor, or the Subcontractors, the City will notify the Contractor of the breach. The City may withhold any further progress payments to the Contractor until the City is satisfied that the Contractor and Subcontractors are in full compliance with these requirements.

6. MONTHLY EMPLOYMENT UTILIZATION REPORTS:

- 6.1. Refer to GENERAL EQUAL OPPORTUNITY CONTRACTING PROGRAM REQUIREMENTS, CONSTRUCTION CONTRACTOR REQUIREMENTS in The WHITEBOOK and the following:
 1. State of California Department of Transportation Payroll Report. Due to the City weekly.
 2. Federal and Non-Federal Work in San Diego County. Submit an updated list only if work is complete or new contracts have been awarded during the span of this project

7. RECORDS OF PAYMENTS TO DBEs:

- 7.1.** The Contractor shall maintain records and documents of payments to DBEs for 5 years following the NOC. These records shall be made available for inspection upon request by any authorized representative of the City, DOT, or both. The reporting requirement shall be extended to any certified DBE Subcontractor.

8. FEDERAL WAGE REQUIREMENTS FOR FEDERALLY FUNDED PROJECTS:

- 8.1.** The successful Bidder's work shall be required to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 8.2.** This Executive Order pertains to Equal Employment Opportunity regulations and contains significant changes to the regulations including new goals and timetables for women in construction and revised goals and time-tables for minorities in construction.
- 8.3.** Minimum wage rates for this project have been predetermined by the Secretary of Labor and are set forth in the Decision of the Secretary and bound into the specifications book. Should there be any difference between the state or federal wage rates, including health and welfare funds for any given craft, mechanic, or similar classifications needed to execute the Work, it shall be mandatory upon the Contractor or subcontractor to pay the higher of the two rates.
- 8.4.** The minimum wage rate to be paid by the Contractor and the Subcontractors shall be in accordance with the Federal Labor Standards Provisions and Federal Wage Rates (see Wage Rates below) and General Prevailing Wage Determination made by the State of California, Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1, whichever is higher.
- 8.5.** A Contractor having 50 or more employees and its Subcontractors having 50 or more employees and who may be awarded a contract of \$50,000 or more will be required to maintain an affirmative action program, the standards for which are contained in the specifications.
- 8.6.** To be eligible for award, each Bidder shall comply with the affirmative action requirements which are contained in the specifications.
- 8.7. Women will be afforded equal opportunity in all areas of employment. However, the employment of women shall not diminish the standards of requirements for the employment of minorities.**

- 9. PREVAILING WAGE RATES:** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and

maintenance work performed under this Contract cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

9.1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its subcontractors shall ensure that all workers who perform work under this Contract 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). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

9.1.1. Copies of such prevailing rate of per diem wages are on file at the 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>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

9.1.2. 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 life of this Contract. 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 and shall apply to this Contract 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 Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

9.2. Penalties for Violations. Contractor 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. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

9.3. Payroll Records. Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is

responsible for ensuring its subcontractors submit certified payroll records to the City.

9.3.1. For contracts entered into on or after April 1, 2015, Contractor and their subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

9.4. Apprentices. Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

9.5. Working Hours. Contractor and their subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict 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) specify penalties to be imposed on contractors 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.

9.6. Required Provisions for Subcontracts. Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

9.7. Labor Code Section 1861 Certification. Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."

9.8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance please contact the City of San Diego's Prevailing Wage Unit at 858-627-3200.

9.9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the

performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It 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 20103.5 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.

9.9.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.

9.9.2. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

9.10. Stop Order. For Contractor or its subcontractors engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractors or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

9.11. List of all Subcontractors. The City may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Agreement at any time during performance of this contract, and Contractor shall provide the list within ten (10) working days of the City's request. Additionally, Contractor shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Contractor until at least 30 days after this information is provided to the City.

9.12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

9.12.1. Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

9.12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the Contract. (Labor Code section 1771.4).

9.12.3. List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 9.12 above. (Labor code section 1773.3).

10. WAGE RATES. This contract shall be subject to the following Davis-Bacon Wage Decisions and will be determined at time of Task Order issuance.

10.1. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968:The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and 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 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

10.2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

10.3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

10.4. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations

issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

10.5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

11. Federal Labor Standards Provisions (U.S. Department of Housing and Urban Development / Office of Labor Relations)

A. 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.

(1) MINIMUM WAGES

- (i) 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 (WH1321)) 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) Additional Classifications.

- (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;
 - (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, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed 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 ("Administrator"), 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 ("OMB") under OMB control number 1235-0023.)
- (C)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or 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 1235-0023.)
- (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 1235-0023.)

(2) Withholding. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. 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 accrued 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 U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(3) Payrolls and basic records.

- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and 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(s), 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 1(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 1(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 1235-0023 and 1215-0018)

(ii) Certified Payroll Reports.

(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 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 <https://www.dol.gov/agencies/whd/forms> 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 U.S. 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 1235-0008.)

(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)(ii), 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; and
- (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 3729 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 U.S. 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, fringe benefits 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 journeyman 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 amended, and 29 CFR Part 30.
- (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 U.S. 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) Certification of Eligibility.**
- (i)** 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)** Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C.

§§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.

(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 B(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 B(1) of this paragraph, **in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2)** 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 B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.

(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 U.S. 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 B(2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(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 B(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 or her 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 29 CFR 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 U.S.C. § 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.

*HUD-4010 (Revision 06/2022) ref. Handbook 1344.1 (Previous editions are obsolete)

12. FEDERAL LABOR STANDARDS PROVISIONS (Office of the Secretary of Labor 29 CFR 5):

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. Minimum Wages. (i) All laborers and mechanics employed or working upon the site of the work, (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) 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 I(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, including helpers, 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. The Federal Agency or its designee shall approve an additional classification and wage rate and fringe benefits therefore 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 the contracting officer 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 the contracting officer 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 the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this section, 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.

2. Withholding. The Federal Agency 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 accrued 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Federal Agency 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.

3. Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project. 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.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Agency 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 the Federal Agency 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 the Federal Agency 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 the Federal Agency, 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 the sponsoring government agency (or the applicant, sponsor, or, owner).

(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)(ii), 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) of this section.

(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) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Agency 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, Federal agency 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 journeyman 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 amended, and 29 CFR Part 30.

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 29 CFR 5.59(a)(1) through (10 and such other clauses as the Federal Agency 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 29 CFR 5.5.

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 the contracting agency, 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).

(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)..

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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 (b)(1) of this section, the contractor and any subcontractor responsible therefore 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 (b)(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 sub paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Federal Agency 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 (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (b)(1) through (4) of this section 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 (b)(1) through (4) of this section.

C. In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

13. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms with the Bid will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

13.1. All EPA Funded Contracts:

1. Federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 - Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).
2. The responsive Bid shall conform to GFE to increase DBE awareness of procurement opportunities through race and gender neutral efforts. Race and gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance.
3. Bidder agrees that it will cooperate with and assist the City in fulfilling the DBE Good Faith Effort Requirement achieving "fair share objectives" and will exercise GFE to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the Bidder shall, in the selection of Subcontractors, and Suppliers for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the affirmative GFE steps.
4. In accordance with EPA's Program for Utilization of Small, Minority Disadvantaged and Women Business Enterprises in procurement under Federal assistance programs, the Contractor agrees to the applicable "fair share objectives" as specified in the Notice Inviting Bids.
5. The provisions in the Contract Documents have been incorporated to prevent unfair practices that adversely affect DBEs.
6. If a DBE Subcontractor fails to complete the Work under the subcontract for any reason, the Contractor shall employ the 6 GFE if soliciting a replacement Subcontractor. The Contractor shall employ the 6 GFE described below even if the Contractor has achieved its fair share objectives.
7. Good Faith Efforts:
 - a) The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The "Good Faith" effort requires the Contractor and any Subcontractors to take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services even if the Contractor has achieved its fair share objectives.
 - b) If the Contractor awards subcontracts, it shall require the Subcontractors to take the steps in these specifications.
 - c) For the EPA defined GFE, see the steps below:
 1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process. Include with the GFE documentation a completed copy of the form AA61, "List of Work Made Available."
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency (MDBA) of the Department of Commerce (DOC). See "DBE Potential Resources Centers" Section in a later part these specifications.
6. If the Contractor awards Subcontracts, the Contractor shall take the steps in paragraphs (1) through (5) above.

13.1.1. Semiannual Utilization Reporting:

The Contractor shall report to the City on a semiannual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise Subcontractors and Suppliers using EPA Form 5700-52A.

14. FORMS:

14.1. The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

14.1.1. E-BIDDING FORMS -

1. 4500-3 DBE Subcontractor Performance Form
2. 4500-4 DBE Subcontractor Utilization Form
3. EPA Form 5700-52A MBE/WBE Utilization Forms
4. Form AA61: List of Work Made Available
5. Form AA62: Summary of Bids Received
6. Form AA63 Good Faith Effort List of Subcontractors Solicited

WIFIA + SRF FUNDING PROVISIONS

IN THE EVENT THAT THESE REQUIREMENTS CONFLICT WITH THE CITY OF SAN DIEGO'S GENERAL EOC REQUIREMENTS, THE FUNDING AGENCY'S REQUIREMENTS WILL CONTROL.

1. WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) AND STATE REVOLVING FUND (SRF) PROGRAMS.

The City of San Diego anticipates receiving financial assistance from the Federal Government and State of California for this project. The following requirements are conditions of the receipt of financial assistance from the United States Environmental Protection Agency under the Federal **Water Infrastructure Finance and Innovation Act (WIFIA)** Program and from the State of California under the **Clean Water State Revolving Fund (CWSRF)** Program. The firm contracting with the City of San Diego (Contractor) shall comply with all of the following requirements. If there are other provisions in the Contract Documents that address the same subjects as this exhibit, Contractor shall comply with both provisions, with the more stringent requirements controlling. If there is a direct conflict between the Agreement and this exhibit, the requirements of this Exhibit shall control in order to preserve the City of San Diego's eligibility to receive financial assistance.

1.1. RECORDS. The Contractor must maintain separate books, records and other material relative to the Project. The Contractor must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Contractor must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Administrating Agency, the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (EPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Contractor must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Contractor agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the termination or expiration of this Agreement. (CWSRF Agmt. Ex. C § C.3.2(d)).

1.2. BONDS. Where contractors are used, the Contractor must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Contractor in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. (CWSRF Agmt. Ex. C § C.3.6).

1.3. COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor and subcontractors must comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, to the extent applicable, the Contractor must:

- a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement.
- b) Comply with the Policy; and
- c) Comply with and require its subcontractors to comply with the state and federal requirements set forth elsewhere in this Agreement (CWSRF Agmt. Ex. C § C.3.8).

1.4. INDEMNIFICATION.

- a) Contractor shall defend, indemnify and hold harmless the State Administrative Agency, the California Infrastructure and Economic Development Bank (Bank), and any trustee, and their officers, employees, and agents for the Bonds issued by the Bank, if any, to the same extent Contractor is obligated to defend, indemnify, and hold harmless the City of San Diego under the Agreement. Contractor shall require its subcontractors to similarly defend, indemnify, and hold harmless the State Administrative Agency, the Bank, and any trustee, and their officers, employees, and agents for the Bonds issued by the Bank, if any, to the same extent its subcontractors are obligated to defend, indemnify, and hold harmless the Contractor. (CWSRF Agmt. Ex. CC.3.18)

1.5. NO DISCRIMINATION.

- a) The Contractor must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Contractor retains ownership or possession of the Project.
- b) If Project Funds are used to acquire or improve real property, the Contractor must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.
- c) The Contractor must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- d) The Contractor's obligations under this section shall survive the term of this Agreement.
- e) During the performance of this Agreement, the Contractor and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- f) The Contractor and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- g) The Contractor and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- h) The Contractor and subcontractors must comply with all applicable federal civil rights regulations, including statutory and national policy requirements. (2 CFR § 200.300). This includes, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech. (Executive Order 13798).
- i) The Contractor and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (CWSRF Agmt. Ex. C § C.3.22(e-j)).
- 1.6. INSURANCE.** For any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing, the State, the State Adminstrating Agency, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project (CWSRF Agmt. Ex. C § C.3.26)
- 1.7. DEBARMENT AND SUSPENSION.** Contractor certifies that it shall not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.
- 1.8. PREVAILING WAGES.** The Contractor agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Contractor must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met. In addition, the Contractor agrees to comply with the Davis-Bacon provisions incorporated by reference in Sections 4, 8, 9, & 10 of this Agreement. Contractor shall comply with all California State and Federal prevailing wage laws and Davis-Bacon Provisions. Contractor shall include in its subcontracts the full the language provided in this Attachment D regarding federal prevailing wages ((CWSRF Agmt. Ex. C § C.3.29)).
- 1.9. ACCESS, INSPECTION, AND PUBLIC RECORDS:** The Contractor must ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Agreement with the City of San Diego. The Contractor acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records.

1.10. NOTICES: Upon the occurrence of any of the following events, the Contractor shall provide immediate notice to the City of San Diego:

- a) Any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Contractor must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the City, through the State Water Board, has determined what actions should be taken to protect and preserve the resource. The Contractor must implement appropriate actions as directed by City, through the State Water Board (CWSRF Agmt. Ex. C § C.3.25(a)ii.)
- b) The discovery of a false statement of fact or representation made in any certification, report, or invoice made by the Contractor;
- c) Any substantial change in scope of the project. The Contractor must undertake no substantial change in scope of the Project until prompt written notice of the proposed change has been provided to the City and the City has given written approval for the change after concurrence with the State Water Board Cessation of all major construction work on the project where such cessation of work is expected to or does extend for a period of thirty (30) Calendar Days or more
- d) Any circumstance, combination of circumstances, or condition which is expected to or does delay Completion of Construction for a period of ninety (90) Calendar Days or more
- e) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Contractor agrees to promptly notify the City. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act; (CWSRF Agmt. Ex. C § C.3.25(d)i-v.).
- f) Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project as required in this **Attachment D**. (CWSRF Agmt. Ex. C § C.3.25(d)viii.).

1.11. EXCLUDED PARTIES: Contractor shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, Contractor shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which CWSRF funding is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at: https://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.html.

1.12. STATE CROSS-CUTTERS: Contractor represents that, as applicable, it shall comply with the following for the term of the Project:

1. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq
2. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations
3. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
4. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
5. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527
6. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.)
7. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
8. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852
9. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503
10. Directives or orders issued pursuant to Division 7 of the Water Code.
11. Regulations in Division 4 of Title 22 of the California Code of Regulations, including but not limited to California Waterworks Standards in Chapter 16, and Lead and Copper regulations in Chapter 17.5

1.13. Federal Requirements and Cross-Cutters for SRF Funding: The Contractor acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions with respect to all Project Costs for the Useful Life of the Project and for the term of the Agreement.

1. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were

or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

2. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.
3. The Recipient must comply with the signage requirements set forth in Section 1.14, *Signage*.
4. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
5. The Recipient shall comply with applicable USEPA general terms and conditions found at <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later>.
6. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier, assigned by the System for Award Management, to the State Water Board.
7. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
8. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
9. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
10. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must

utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

11. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
12. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
13. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
14. The Recipient certifies to the best of its knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.
 - c. The Contractor shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks reimbursements under this Agreement.

15. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing
16. If the Project relates to construction of a publicly owned treatment works, where the Contractor contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Contractor shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
17. If the Project relates to construction of a publicly owned treatment works, the Contractor certifies that it has developed and is implementing a fiscal sustainability plan for the Project, except as set forth in Exhibit D, that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the Recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.
18. Executive Order No. 11246. The Contractor shall include in its contracts and subcontracts related to the Project the following provisions:
- a. *"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, 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, creed, color, 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.*
 - b. *"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, creed, color, or national origin.*

- c. *"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 the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment."*
- d. *"The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor."*
- e. *"The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders."*
- f. *"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 cancelled, 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 No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law."*
- g. *"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 No. 11246 of Sept. 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 the contracting agency may direct 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 by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."*

19. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
20. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <https://sam.gov/>.

21. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
22. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
23. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at: www.fgdc.gov.
24. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
25. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 month.
26. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with USEPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
27. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, USEPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the USEPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in USEPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

28. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at: <https://olaw.nih.gov/policies-laws/phs-policy.htm>.
29. The Recipient certifies that no Project Funds will be used on:
 - a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - b. Telecommunications or video surveillance services produced by such entities.
 - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
 - d. Other telecommunications or video surveillance services or equipment in violation of x CFR 200.216: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>.
30. The Recipient agrees to comply with all Environmental Cross-Cutters:
 - a. Archeological and Historic Preservation Act (16 U.S.C. § 469; 54 U.S.C. §§ 312501-312508)
 - b. Clean Air Act Conformity (42 U.S.C. § 7401)
 - c. Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.)
 - d. Coastal Zone Management Act (16 U.S.C. § 1451 et seq.)
 - e. Endangered Species Act (16 U.S.C. § 1531 et seq.)
 - f. Farmland Protection Policy Act (7 U.S.C. § 4201 et seq.)
 - g. Floodplain Management [Executive Order 11988 (1997), as amended by Executive Order No. 13690 (2015)]
 - h. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)
 - i. National Historic Preservation Act (54 U.S.C. §§ 300101 et seq.)
 - j. Sole Source Aquifer, section 1424(e) of Safe Drinking Water Act, 42 U.S.C. 300h- 3(e)
 - k. Wetlands Protection – Executive Order No. 11990 (1977), as amended by Executive Order no. 12608 (1997)
 - l. Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.)

- 1.14. SIGNAGE.** The Contractor shall place the following signage materials in a conspicuous location at Project Construction sites in compliance with WIFIA and SRF requirements:

WIFIA Signage Materials

1. Poster: Employee Rights Under the Davis-Bacon Act
 - a. Available at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>.
 - b. Must be printed to size 11"x17".
2. Poster: Equal Employment Opportunity Is The Law
 - a. Available at http://www.eeoc.gov/sites/default/files/2022-10/22-088_EEOC_KnowYourRights_10_20.pdf.
 - b. Must be printed to size 11"x17".
3. Booklet: Print-out of the Davis-Bacon Wage Determination pages governing the project
 - a. All pages must be made available in a binder/booklet.
 - b. All pages must be printed to standard size 8.5"x11".

SRF Signage Materials

1. Contractor shall post a physical sign to comply with the General Signage Requirements of SRF funding provisions. Sign shall be at least 4 feet tall by eight feet wide made of 3/4 inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period.
 - a. The sign shall include the following logos (hyperlink provided):
 - i. Logo: Clean Water State Revolving Fund:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/logos/epa_cwsrf_logo.pdf
 - ii. Logo: California Water Boards Logo:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/logos/waterboards_logo.pdf
 - iii. Logo: Environmental Protection Agency:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/logos/epa_logo_vert.jpg



- b. The sign shall include the following statement
 - i. "Funding for this \$xx million [name of project] project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

- c. The Project Sign may include another agency’s required promotional information so long as the above requirements are satisfied. The sign shall be prepared in a professional manner.
- 2. Contractor shall also comply with the Bipartisan Infrastructure Law Signage Requirements:
 - a. Investing in America Emblem: Contractor shall ensure that a professionally prepared sign is placed at Project construction sites displaying the official Investing in America emblem and must identify the project as a “Project funded by President Biden’s Bipartisan Infrastructure Law.”
 - b. The sign must be placed at Construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good conditions throughout the construction period. The Contractor shall ensure compliance with the guidelines and design specification provided by the EPA for using the official Investing in America emblem available at: <http://www.epa.gov/invest/investing-america-signage>.
 - c. Procuring Signs: Consistent with Section 6002 of the Resource Conservation and Recovery Act, 42 USC 6962, and 2 CFR 200.323, Contractor is encouraged to use recycled material when procuring signs. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, Contractor is encouraged to translate the language on signs (excluding the official Investing in America emblem of EPA logo or seal) into the appropriate non-English languages(s).



Think Blue Infrastructure Signage Materials

- 1. The Contractor shall place a Think Blue Infrastructure sign, printed to size 8.5” x 11” with below graphic and updated with an appropriate Description and Estimated Start and Completion Dates.

1.15. DISCLAIMER. Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

1.16. WORK AND TRAVEL OUTSIDE OF CALIFORNIA: No work or travel outside the State of California is permitted unless the City provides prior written authorization. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>, as of the date costs are incurred by the Contractor. (CWSRF Agmt. Ex. B § B.1.7.9).

1.17. MATERIALS DEVELOPED FOR PUBLIC DISTRIBUTION: Contractor agrees that any public reports, documents, publications or other materials developed for public distribution supported by the Agreement shall contain the following statement (CWSRF Agmt CC.4.3.xii)

"Funding for this [Name of Project] has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

1.18. AMERICAN IRON AND STEEL: The Contractor acknowledges to and for the benefit of the City of San Diego ("Purchaser") and the United States Environmental Protection Agency ("EPA") that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA (see subsections "b" and "c" below for additional details on waivers). Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any

loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

- a. **Project Material Log of AIS Items:** The Contractor shall provide the Engineer with a Project Material Log within 40 Working Days from the Limited Notice to Proceed (LNTP) issuance date. The Project Material Log must be in Microsoft Excel format and include an itemized list of all materials necessary for the Project. The Project Material Log shall include three columns that (1) identify AIS materials; (2) indicate, if appropriate, that the Engineer should pursue a waiver for a given AIS material by selecting one of three waiver categories: Cost, Availability, and Public Interest; and (3) identify AIS materials that should be allocated to the De Minimis Log.
- b. **AIS Waivers:** Note the EPA has made available three (3) waivers that may exempt certain materials from AIS compliance requirements. The City of San Diego must submit a waiver request in a Word document format, specifying which of the three waiver categories are being sought. The waiver request must address the criteria on the EPA's Waiver Checklist, available at this website: <https://www.epa.gov/cwsrf/ais-waiver-request-checklist-assistance-recipients>. Once submitted to the EPA, it may take up to 3 months for the EPA to review and reach a decision to either approve or deny the waiver request. Though the City of San Diego must be the agency to submit the waiver request to the EPA, the Contractor(s) and Subcontractor(s) shall provide narrative support, as requested, to the City of San Diego to aid in the development of the waiver request. The three waiver categories are as follows:
 - c. **Cost Waiver:** Compliance with American Iron and Steel will increase total project costs by at least 25%. Note that this is a very high threshold to meet and EPA has only awarded one Cost Waiver in the history of the WIFIA program.
 - d. **Public Interest Waiver:** Compliance with American Iron and Steel is not in the Public's Interest. Note that EPA's evaluation of a public interest waiver is complicated and make take more time for a decision.
 - e. **Availability Waiver:** The quantity of iron or steel products is (1) not available or will not be available at the time need and place needed, and in the proper form or specification as specified in the project plans and design, or (2) the quality of iron or steel products is not available in sufficient and reasonably available quantities. Availability waivers are by far the most common waiver sought by WIFIA borrowers and approved by the EPA. A list of "approved waivers" is

available at this website: <https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-approved-project-waivers>. The City of San Diego and its Contractor shall review this list and, if an identical material is discovered to have already been approved, reference the material and Borrower awarded the waiver to enhance the City of San Diego's likelihood of receiving a similar waiver award.

- f. **AIS De Minimis Log:** The EPA has created an additional waiver category for "incidental" materials, referred to as the National De Minimis Waiver. The De Minimis waiver permits the use of nondomestic, incidental, iron or steel products in a project that must otherwise comply with AIS requirements. Generally, the De Minimis waiver takes the form of a log, developed using Microsoft Excel or similar software. The Contractor may allocate items to the De Minimis log so long as:
 - g. The items are "incidental", defined by the EPA as: "the project can function as intended without the product, or the product is not integral to the project purpose" and that "determining whether a product is considered incidental is a decision that should be made" by the City of San Diego in collaboration with Contractor.
 - h. The sum of all items on the De Minimis log does not exceed 5% of total material costs.
 - i. Any single item on the De Minimis log cannot exceed 1% of total material costs.
 - j. A template of the De Minimis log is available to the Contractor through the City of San Diego. If utilized, the content of items added to the De Minimis log should routinely be reviewed by the City of San Diego and the Contractor.

1.19. BUILD AMERICA BUY AMERICA (BABA): This project is waived for BABA requirements.

1.20. WAGE RATE REQUIREMENTS (DAVIS-Bacon): Contractor must include in its subcontracts the full the language provided in this Attachment D.

1.21. PROCUREMENT PROHIBITIONS UNDER SECTION 306 OF THE CLEAN AIR ACT AND SECTION 508 OF THE CLEAN WATER ACT, INCLUDING EXECUTIVE ORDER 11738, ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, Contractor may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.

1.22. RUSSIAN SANCTIONS: (CWSRF Agmt. Ex. D § Legal). The Contractor represents that the Contractor is not a target of economic sanctions imposed in response to Russia's actions in Ukraine imposed by the United States government or the State of California. The Contractor is required to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://ofac.treasury.gov/recent-actions/20140912>).

The Contractor is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more.

For Contractors and subcontractor with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, the Contractor is required to report to the City on an annual basis to include, but is not limited to, information related to steps taken in response to Russia's actions in Ukraine, including but not limited to:

1. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
3. Direct support to the government and people of Ukraine.

1.23. PROFESSIONALS: The Contractor agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.

1.24. ADMINISTRATIVE REMEDIES: Whenever the State Water Board determines that the Recipient, the Recipient's contractor, consultant, employee, agent, assignee, or grantee has violated any requirement or term of the Agreement, the State Water Board may impose civil penalties in accordance with Water Code, section 13497. The State Water Board may impose civil liability administratively against the Recipient or the Recipient's consultant or contractor or other agent furnishing any information related to funds disbursed or costs claimed for reimbursement if the Recipient or the Recipient's consultant or contractor or other agent fails to personally attest that the information is true, accurate, and complete the best of one's knowledge. (Wat. Code, § 13498.) The State Water Board may impose civil liability administratively against any person who makes a misrepresentation in any submittal to the State Water Board, including, but not limited to, an application, report, certification, record, invoice, form, or other document that is submitted to the State Water Board relating to a financial assistance agreement.

1.25. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP): The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. OFCCP site portal available at: <https://ncap.dol.gov/>

1.26. NEW RESTRICTIONS ON LOBBYING: Federal Lobbying Restrictions (31 U.S.C 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of

Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for EPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City of San Diego the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110. The Contractor certifies to the best of its knowledge and belief that:

- a). No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b). If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Administrating Agency. Standard Form SF-LLL is available at <https://www.epa.gov/grants/sf-lll-disclosure-lobbying-activities>

The Contractor shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

2. EQUAL OPPORTUNITY CLAUSES:

- 2.1. The following equal opportunity clauses are incorporated by reference herein:
- 2.2. The equal opportunity clause located 41 CFR 60.1.4(a), which specifies the obligations imposed under Executive Order 11246.
- 2.3. The equal opportunity clause located at 41 CFR 60-741.5, which contains the obligations imposed by Section 503 of the Rehabilitation Act of 1973.
- 2.4. The "Equal Opportunity Clause" (Resolution No. 765092) filed on December 4, 1978, in the Office of the City Clerk, San Diego, California and incorporated in the "Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - Document No. 769023, filed September 11, 1984, in the Office of the City Clerk, San Diego, California) is applicable to all non-exempt City of San Diego construction contracts and subcontracts of \$2,000 or more.
- 2.5. Age Discrimination Act of 1975, Pub. L. 94-135.
- 2.6. Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.
- 2.7. Section 13 of the Federal Water Pollution Control Acts Amendments of 1972, Pub. L. 92-5200 (the Clean Water Act).

- 2.8. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (Executive Orders 11914 and 11250).
- 2.9. Women's Minority Business Enterprises, Executive Orders 11625, 12138 and 12432.
- 2.10. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

3. FEDERAL EQUAL EMPLOYMENT SPECIFICATIONS UNDER THE WIFIA PROGRAM:

- 3.1. The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965).
- 3.2. Contractor's compliance with Executive order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.
- 3.3. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 advancements 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, sexual orientation, gender identity, or national origin.
 - 3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. 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 the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. 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 cancelled, terminated, or suspended in whole or in part and the contractor may be
8. declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
9. The contractor will include the provisions of paragraphs (1) through (8) 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 No. 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. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

3.4. Standard Federal Equal Employment Opportunity Construction Contract Specifications. (41 CFR 60-4.3)As used in these specifications:

- a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

- c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d) "Minority" includes:
- i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal

procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

- FOR PRELIMINARY USE ONLY
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n) Ensure that all facilities and company activities are non-segregated except that separate or single- user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

3.5. Segregated facilities. (41 CFR 60-1.8) The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

3.6. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) located at 41 CFR 60-4.2:

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade: 16.90%

Goals for female participation for each trade: 6.90%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract
4. resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
5. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is San Diego, California.

4. FEDERAL WAGE REQUIREMENTS FOR FEDERALLY FUNDED PROJECTS:

- 4.1 The successful Bidder's work shall be required to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 4.2 This Executive Order pertains to Equal Employment Opportunity regulations and contains significant changes to the regulations including new goals and timetables for women in construction and revised goals and timetables for minorities in construction.
- 4.3 Minimum wage rates for this project have been predetermined by the Secretary of Labor and are set forth in the Decision of the Secretary and bound into the specifications book. Should there be any difference between the state or federal wage rates, including health and welfare funds for any given craft, mechanic, or similar classifications needed to execute the Work, it shall be mandatory upon the Contractor or subcontractor to pay the higher of the two rates.
- 4.4 The minimum wage rate to be paid by the Contractor and the Subcontractors shall be in accordance with the Federal Labor Standards Provisions (see below) and Federal Wage Rates (see Wage Rates below) and General Prevailing Wage Determination made by the State of California, Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1, whichever is higher.
- 4.5 A Contractor having 50 or more employees and its Subcontractors having 50 or more employees and who may be awarded a contract of \$50,000 or more will be required to maintain an affirmative action program, the standards for which are contained in the specifications.
- 4.6 To be eligible for award, each Bidder shall comply with the affirmative action requirements which are contained in the specifications
- 4.7 Women will be afforded equal opportunity in all areas of employment. However, the employment of women shall not diminish the standards of requirements for the employment of minorities.

5. VIOLATION OR BREACH OF REQUIREMENTS:

- 5.1. If at any time during the course of the Contract there is a violation of the Affirmative Action or Equal Employment Opportunity requirements by the Contractor, or the Subcontractors, the City will notify the Contractor of the breach. The City may withhold any further progress payments to the Contractor until the City is satisfied that the Contractor and Subcontractors are in full compliance with these requirements

6. MONTHLY EMPLOYMENT UTILIZATION REPORTS:

- 6.1. Refer to the GENERAL EQUAL OPPORTUNITY CONTRACTING PROGRAM REQUIREMENTS, CONSTRUCTION CONTRACTOR REQUIREMENTS in the WHITEBOOK and the following:
 - a) Federal and Non-Federal Work In San Diego County. Submit an updated list only if work is complete or new contracts have been awarded during the span of this project.

7. RECORDS OF PAYMENTS TO DBEs:

7.1. The Contractor shall maintain records and documents of payments to DBEs for 5 years following the NOC. These records shall be made available for inspection upon request by any authorized representative of the City, funding agency, or both. The reporting requirement shall be extended to any certified DBE Subcontractor

8. **PREVAILING WAGE RATES:** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

8.1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its subcontractors shall ensure that all workers who perform work under this Contract 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). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

- a) Copies of such prevailing rate of per diem wages are on file at the City of San Diego 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>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
- b) 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 life of this Contract. 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 and shall apply to this Contract 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 Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

- 8.2. Penalties for Violations.** Contractor 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. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
- 8.3. Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City of San Diego's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City of San Diego. Contractor and their subcontractors shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 8.4. Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 8.5. Working Hours.** Contractor and their subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict 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) specify penalties to be imposed on contractors 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.
- 8.6. Required Provisions for Subcontracts.** Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 8.7. Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 8.8. Labor Compliance Program.** The City of San Diego has its own Labor Compliance Program authorized in August 2011 by the DIR. The City of San Diego will withhold contract payments when payroll records are delinquent or deemed inadequate by the City of San Diego or other governmental entity, or it has been established after an investigation by the City of San Diego or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Prevailing Wage Unit at 858-627-3200.
- 8.9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor

shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It 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 20103.5 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.

- a) A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.
- b) By submitting a bid or proposal to the City of San Diego, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City of San Diego at the time of bid or proposal due date or upon request.

8.10. Stop Order. For Contractor or its subcontractors engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractors or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

8.11. List of all Subcontractors. The City of San Diego may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Agreement at any time during performance of this contract, and Contractor shall provide the list within ten (10) working days of the City of San Diego's request. Additionally, Contractor shall provide the City of San Diego with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City of San Diego shall withhold final payment to Contractor until at least 30 days after this information is provided to the City of San Diego.

8.12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

- a) **Registration.** The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1)
- b) **Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego but will not be required to be submitted online with the DIR directly. The Contractor will

need to keep those records for at least three years following the completion of the Contract. (Labor Code section 1771.4).

- c) **List of all Subcontractors.** The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 8.11. above. (Labor code section 1773.3).

9. DAVIS-BACON WAGE RATES AND PROVISIONS UNDER THW WIFIA PROGRAM:

9.1. DAVIS-BACON PROVISIONS. Contractor shall include the following language in this section in all of its subcontracts for the Project. Contractor and all subcontractors working on the Project shall comply with any provisions herein applicable to contractors and subcontractors, respectively:

9.2. In any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor):

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 paragraph (a)(1)(iv) of this section; 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 § 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 paragraph (a)(1)(ii) of this section) 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) The WIFIA assistance recipient, the City of San Diego, on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, 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. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore 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 the WIFIA assistance recipient 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 to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30- day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the WIFIA assistance recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the WIFIA assistance recipient shall refer the questions, including the views of all interested parties and the recommendation of the WIFIA assistance recipient, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, 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.
- (2) Withholding. the City of San Diego, shall upon written request of the WIFIA Director or 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 accrued 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director 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.
- (3) Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 1(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 1(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.

(ii) {no text here}

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of San Diego. 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 <https://www.dol.gov/agencies/whd/forms/wh347> 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 the City of San Diego, for transmission to the EPA, 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 section 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 the City of San Diego.

(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 § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, 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 Regulations, 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 paragraph (a)(3)(ii)(B) of this section.
- (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 paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City of San Diego, EPA, 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, the EPA may, after written notice to the City of San Diego, 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 WHD 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 journeyman 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 WHD Administrator 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 classification of 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 this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (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 shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, 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 29 CFR 5.5.
- (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 the City of San Diego, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
- (i) 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).
- (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).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. 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 work week in which he or she is employed on such work to work in excess of forty 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 forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section 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 paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The City of San Diego shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, 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 contractor, 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 paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section 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 paragraphs (b)(1) through (4) of this section.

In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require the City of San Diego to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the City of San Diego, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Note throughout the Construction period of the Project, a representative from the City of San Diego will conduct periodic Labor Standards Interviews with Contractor and Subcontractor construction staff using form *SF-1445, Labor Standards Interviews*, in accordance with the Davis-Bacon Act. This form and interview seek to verify that construction staff are being paid wages as represented in the weekly payrolls submissions to the City of San Diego.

10. WAGE RATES: This Contract shall be subject to the following Davis-Bacon Wage Determination:

10.1. Processor: Upload Current Wage Rates from Ref. Docs. Lib./Wage Rates and insert here.

11. AGENCY SPECIFIC PROVISIONS DISADVANTAGED BUSINESS ENTERPRISES PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening and submitting the forms with the Bid, will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

EPA Requirements:

1. Federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 - Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).
2. The responsive Bid shall conform to GFE to increase DBE awareness of procurement opportunities through race and gender neutral efforts. Race and gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance.
3. Bidder agrees that it will cooperate with and assist the City in fulfilling the DBE Good Faith Effort Requirement achieving "fair share objectives" and will exercise GFE to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the Bidder shall, in the selection of Subcontractors, and Suppliers for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the affirmative GFE steps.
4. In accordance with EPA's Program for Utilization of Small, Minority Disadvantaged and Women Business Enterprises in procurement under Federal assistance programs, the Contractor agrees to the applicable "fair share objectives" as specified in Attachment D.
5. The provisions in the Contract Documents have been incorporated to prevent unfair practices that adversely affect DBEs.
6. If a DBE Subcontractor fails to complete the Work under the subcontract for any reason, the Contractor shall employ the 6 GFE if soliciting a replacement Subcontractor. The Contractor shall employ the 6 GFE described below even if the Contractor has achieved its fair share objectives.
7. Contractor must maintain proper records demonstrating that the 6 Good Faith Efforts where applied when procuring subcontractors.
8. **Disadvantaged Business Enterprises (DBE) Six Good Faith Efforts:** The contractor must ensure that the DBE's six good faith efforts are used during the procurement of subcontractors for the [Project]. :
 1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and

Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes posting solicitations for bids or proposals for a minimum of 30 Calendar Days (refer to 33 CFR 33.301) before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process. Include with the GFE documentation a completed copy of the form AA61, "List of Work Made Available".
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the Department of Commerce (DOC). See "DBE Potential Resources Centers" Section in a later part these specifications.
6. If the Contractor awards Subcontracts, the Contractor shall take the steps in the paragraphs above.

California State Revolving Fund Requirements:

- a) Refer to EPA Requirements in Section 11.1 above and the following:
- b) The Bidder shall take affirmative steps prior to Bid opening to assure that MBE's and WBE's are used whenever possible as sources of supplies, construction and services.
- c) The affirmative steps are defined for contracts funded by State Water Board as follows:
- d) Utilization of US Small Business Administration and Minority Business Development Agency (MBDA) resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs
- e) For additional assistance, the Contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. There are contact phone numbers listed in Step 3 that will assist you in reaching the 2 offices if the Internet is unavailable. Do not write to these sources.
- f) The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 30 Calendar Days prior to Bid opening and solicitation to DBE Subcontractors at least 15 Calendar Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request

- g) Include qualified DBEs on solicitation lists and record the information. Solicitation shall be as broad as possible.
- h) If DBE sources are not located, explain why and describe the efforts made.
- i) The Contractor shall send invitations to at least 10 (or all, if less than 10) DBE vendors for each item of the Work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of GFE shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.
- j) A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all Subcontractors, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form AA62. If a low bid was not accepted, an explanation shall be provided.

Annual DBE Utilization Reporting: The Contractor shall report to the City on an annual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise Subcontractors and Suppliers

14. FORMS:

14 1. The following forms shall be submitted **with the Bid Submittal**. Failure to include any of the forms shall cause the Bid to be deemed non-responsive.

- 1. Form 4500-3: DBE Subcontractor Performance Form
- 2. Form 4500-4: DBE Subcontractor Utilization Form

4.1.1. Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

- 1. Form 4500-2: DBE Subcontractor Participation Form

4.1.2. The following forms shall be completed and submitted within **4 Working Days after the Bid opening by 5 PM**. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

- 1. Form AA61: List of Work Made Available
- 2. Form AA62: Summary of Bids Received
- 3. Form AA63: Good Faith Effort List of Subcontractors Solicited using California State Revolving Funds (CASRF) Form UR-334.

WIFIA FUNDING PROVISIONS

IN THE EVENT THAT THESE REQUIREMENTS CONFLICT WITH THE CITY OF SAN DIEGO'S GENERAL EOC REQUIREMENTS, THE FUNDING AGENCY'S REQUIREMENTS WILL CONTROL.

1. WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) PROGRAM.

The City of San Diego anticipates receiving financial assistance from the Federal Government for this project. The following requirements are conditions of the receipt of financial assistance

from the United States Environmental Protection Agency under the Federal **Water Infrastructure Finance and Innovation Act (WIFIA)** Program. The firm contracting with the City of San Diego (Contractor) shall

comply with all of the following requirements. If there are other provisions in the Contract Documents that address the same subjects as this exhibit, Contractor shall comply with both provisions, with the more stringent requirements controlling. If there is a direct conflict between the Agreement and this exhibit, the requirements of this Exhibit shall control in order to preserve the City of San Diego's eligibility to receive financial assistance.

- 1.1. RECORDS.** The Contractor must maintain separate books, records and other material relative to the Project. The Contractor must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of five (5) years after Completion of Construction. The Contractor must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (EPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Contractor must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Contractor agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the termination or expiration of this Agreement.
- 1.2. DEBARMENT AND SUSPENSION.** Contractor certifies that it shall not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.
- 1.3. PREVAILING WAGES.** The Contractor agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Contractor must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met. In addition, the Contractor agrees to comply with the Davis-Bacon provisions incorporated by reference in Sections 4, 8, 9, & 10 of this Agreement. Contractor shall comply with all California State and Federal prevailing wage laws and Davis-Bacon Provisions. Contractor shall include in its subcontracts the full the language provided in this Attachment D regarding federal prevailing wages.
- 1.4. ACCESS, INSPECTION, AND PUBLIC RECORDS:** The Contractor must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Agreement with the City of San Diego. The Contractor acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records.

1.5. NOTICES: Upon the occurrence of any of the following events, the Contractor shall provide immediate notice to the City of San Diego:

- a) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Contractor before any arbitrator, Governmental Authority,
- b) alternative dispute resolution body, or other neutral third-party, or the receipt by such Obligor in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Contractor that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgment against the Contractor that could reasonably be expected to have a Material Adverse Effect, either individually or in the aggregate.
- c) Delayed Government Approvals: Any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the applicable Obligor's plans to remedy or mitigate the effects of such failure or delay
- d) Environmental Notices: Any material notice of violation or material change in finding under any Environmental Law related to the Project or the Leased Property or any material changes to the NEPA Determination
- e) Uncontrollable Force: The occurrence of any Uncontrollable Force that could reasonably be expected to materially and adversely affect the Project.
- f) Other Adverse Effects: The occurrence of any other event or condition, including any notice of breach from a contract counterparty or any holder of any obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project or the Leased Property.

1.6. SIGNAGE. The Contractor shall place the following signage materials in a conspicuous location at Project Construction sites in compliance with WIFIA requirements:

WIFIA Signage Materials

1. Poster: Employee Rights Under the Davis-Bacon Act
 - a. Available at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>.
 - b. Must be printed to size 11"x17".
2. Poster: Equal Employment Opportunity Is The Law
 - a. Available at http://www.eeoc.gov/sites/default/files/2022-10/22-088_EEOC_KnowYourRights_10_20.pdf.
 - b. Must be printed to size 11"x17".

3. Booklet: Print-out of the Davis-Bacon Wage Determination pages governing the project,
 - a. App pages must be made available in a binder/booklet.
 - b. All pages must be printed to standard size 8.5"x11".
4. The Contractor shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure and color logos (available from the Division):



- a.
- b. "Funding for this \$xx million [name of project] project has been provided in full or part by the Water Infrastructure Finance and Innovation Act (WIFIA) Program through an agreement with the United States Environmental Protection Agency.
- c. The Project sign may include another agency's required promotional information so long as the above requirements are satisfied. The sign shall be prepared in a professional manner.

Think Blue Infrastructure Signage Materials

1. The Contractor shall place a Think Blue Infrastructure sign, printed to size 8.5" x 11" with below graphic and updated with an appropriate Description and Estimated Start and Completion Dates.

1.7 CIVIL RIGHTS OBLIGATIONS. Contractor shall comply with the following federal non-discrimination requirements:

1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
3. The Age Discrimination Act, Act of 1975, which prohibits age discrimination.
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
5. 40 CFR Part 7, as it relates to the foregoing.

1.8. PROHIBITION ON CERTAIN TELECOMMUNICATIONS: The John S McCain Nation Defense Authorization Act for Fiscal Year 2019 prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, "covered telecommunications equipment or services" means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance services produced by such entities;
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunication or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country
- e) The Act does not prohibit:
 - 1) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
 - 2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

1.9. AMERICAN IRON AND STEEL: The Contractor acknowledges to and for the benefit of the City of San Diego ("Purchaser") and the United States Environmental Protection Agency ("EPA") that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other

provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

- a. **Project Material Log of AIS Materials:** The Contractor shall provide the Engineer with a Project Material Log within 40 Working Days from the Limited Notice to Proceed (LNTTP) issuance date. The Project Material Log must be in Microsoft Excel format and include an itemized list of all materials necessary for the Project. The Project Material Log shall include three columns that (1) identify AIS materials; (2) indicate, if appropriate, that the Engineer should pursue a waiver for a given AIS material by selecting one of three waiver categories: Cost, Availability, and Public Interest; and (3) identify AIS materials that should be allocated to the De Minimis Log
- b. **AIS Waivers:** Note the EPA has made available three (3) waivers that may exempt certain materials from AIS compliance requirements. The City of San Diego must submit a waiver request in a Word document format, specifying which of the three waiver categories are being sought. The waiver request must address the criteria on the EPA's Waiver Checklist, available at this website: <https://www.epa.gov/xwsrf/ais-waiver-request-checklist-assistance-recipients>. Once submitted to the EPA, it may take up to 3 months for the EPA to review and reach a decision on whether to approve or deny the request. Though the City of San Diego must be the agency to submit the waiver request to the EPA, the Contractor(s) and Subcontractor(s) shall provide narrative support, as requested, to the City of San Diego to aid in the development of the waiver request. The three waiver categories are as follows:
 1. **Cost Waiver:** Compliance with American Iron and Steel will increase total project costs by at least 25%. Note that this is a very high threshold to meet and the EPA has only awarded one Cost Waiver in this history of the WIFIA program.
 2. **Public Interest Waiver:** Compliance with American Iron and Steel is not in the Public's Interest. Note that EPA's evaluation of a public interest waiver is complicated and may take more time for a decision.
 3. **Availability Waiver:** The quantity of iron or steel products is (1) not available or will not be available at the time needed and placed needed, and in the proper form or specification as specified in the project plans and design, or (2) the quality of iron or steel products is not available in sufficient and reasonably available quantities. Availability waivers are by far the most common waiver sought by WIFIA borrowers and approved by the EPA. A list of "approved waiver" is available at this website: <https://www.epa.gov/cwsrf/american-iron-and-steel-requirements-approved-project-waivers>. The City of San Diego and its Contractor shall review this list and, if an identical

material is discovered to have already been approved, shall reference the material and name of the Borrower awarded the waiver to enhance the City of San Diego's likelihood of receiving a similar waiver award.

- c. **AIS De Minimis Log:** The EPA has made available an additional waiver category for "incidental" materials, referred to as the National De Minimis Waiver. The De Minimis waiver permits the use of nondomestic, iron or steel products in a project that must otherwise comply with AIS requirements. Generally, the De Minimis waiver takes the form of a log, developed in Microsoft Excel or similar software. The Contractor may allocate items to the De Minimis log so long as:
1. The items are "incidental", defined by the EPA as "the project can function as intended without the product, or the product is not integral to the project purpose" and that "determining whether a product is considered incidental is a decision that should be made" by the City of San Diego in collaboration with its Contractor.
 2. The sum of all items on the De Minimis log does not exceed 5% of total material costs.
 3. Any single item on the De Minimis log does not exceed 1% of total material costs.

A template of the of the De Minimis log is available to the Contractor through the City of San Diego. If utilized, the content of items added to the De Minimis log should routinely be reviewed by the City of San Diego and the Contractor.

- 1.10. BUILD AMERICA BUY AMERICA (BABA):** This project is waived for BABA requirements.
- 1.11. WAGE RATE REQUIREMENTS (DAVIS-Bacon):** Contractor must include in its subcontracts the full the language provided in this Attachment D.
- 1.12. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP):** The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. OFCCP site portal is available at: <https://ncap.dol.gov/>
- 1.13. NEW RESTRICTIONS ON LOBBYING:** Federal Lobbying Restrictions (31 U.S.C 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for EPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City of San Diego the certification and disclosure forms in Appendix A and

Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110. The Contractor certifies to the best of its knowledge and belief that:

- a). No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b). If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Administrating Agency. Standard Form SF-LLL is available at <https://www.epa.gov/grants/sf-lll-disclosure-lobbying-activities>

The Contractor shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

2. EQUAL OPPORTUNITY CLAUSES:

- 2.1. The following equal opportunity clauses are incorporated by reference herein:
- 2.2. The equal opportunity clause located 41 CFR 60.1.4(a), which specifies the obligations imposed under Executive Order 11246.
- 2.3. The equal opportunity clause located at 41 CFR 60-741.5, which contains the obligations imposed by Section 503 of the Rehabilitation Act of 1973.
- 2.4. The "Equal Opportunity Clause" (Resolution No. 765092) filed on December 4, 1978, in the Office of the City Clerk, San Diego, California and incorporated in the "Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - Document No. 769023, filed September 11, 1984, in the Office of the City Clerk, San Diego, California) is applicable to all non-exempt City of San Diego construction contracts and
- 2.5. Women's Minority Business Enterprises, Executive Orders 11625, 12138 and 12432.
- 2.6. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

3.3. FEDERAL EQUAL EMPLOYMENT SPECIFICATIONS UNDER THE WIFIA PROGRAM:

- 3.1. The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965).
- 3.2. Contractor's compliance with Executive order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

3.3. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 advancements 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, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. 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 the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. 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 cancelled, 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 No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) 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 No. 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. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

3.4. Standard Federal Equal Employment Opportunity Construction Contract Specifications. (41 CFR 60-4.3)

1. As used in these specifications:
 - a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d) "Minority" includes:
 - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

- iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the

completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- g) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- h) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- i) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- j) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- k) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

- FOR OFFICIAL USE ONLY
- l) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - m) Ensure that all facilities and company activities are non-segregated except that separate or single- user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - n) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - o) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

3.5 Segregated facilities. (41 CFR 60-1.8) The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

3.6 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) located at 41 CFR 60-4.2:

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade: 16.90%

Goals for female participation for each trade: 6.90%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice , and in the contract resulting from this solicitation, the "covered area" is San Diego, California.

4. FEDERAL WAGE REQUIREMENTS FOR FEDERALLY FUNDED PROJECTS:

- 4.1 The successful Bidder's work shall be required to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

- 4.2 This Executive Order pertains to Equal Employment Opportunity regulations and contains significant changes to the regulations including new goals and timetables for women in construction and revised goals and timetables for minorities in construction.
- 4.3 Minimum wage rates for this project have been predetermined by the Secretary of Labor and are set forth in the Decision of the Secretary and bound into the specifications book. Should there be any difference between the state or federal wage rates, including health and welfare funds for any given craft, mechanic, or similar classifications needed to execute the Work, it shall be mandatory upon the Contractor or subcontractor to pay the higher of the two rates.
- 4.4 The minimum wage rate to be paid by the Contractor and the Subcontractors shall be in accordance with the Federal Labor Standards Provisions (see below) and Federal Wage Rates (see Wage Rates below) and General Prevailing Wage Determination made by the State of California, Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1, whichever is higher.
- 4.5 A Contractor having 50 or more employees and its Subcontractors having 50 or more employees and who may be awarded a contract of \$50,000 or more will be required to maintain an affirmative action program, the standards for which are contained in the specifications.
- 4.6 To be eligible for award, each Bidder shall comply with the affirmative action requirements which are contained in the specifications.
- 4.7 Women will be afforded equal opportunity in all areas of employment. However, the employment of women shall not diminish the standards of requirements for the employment of minorities.

5. VIOLATION OR BREACH OF REQUIREMENTS:

- 5.1. If at any time during the course of the Contract there is a violation of the Affirmative Action or Equal Employment Opportunity requirements by the Contractor, or the Subcontractors, the City will notify the Contractor of the breach. The City of San Diego may withhold any further progress payments to the Contractor until the City is satisfied that the Contractor and Subcontractors are in full compliance with these requirements

6. MONTHLY EMPLOYMENT UTILIZATION REPORTS:

- 6.1. Refer to the GENERAL EQUAL OPPORTUNITY CONTRACTING PROGRAM REQUIREMENTS, CONSTRUCTION CONTRACTOR REQUIREMENTS in the WHITEBOOK and the following:
- 6.2. Federal and Non-Federal Work in San Diego County. Submit an updated list only if work is complete or new contracts have been awarded during the span of this project.

7. RECORDS OF PAYMENTS TO DBEs:

7.1. The Contractor shall maintain records and documents of payments to DBEs for 5 years following the NOC. These records shall be made available for inspection upon request by any authorized representative of the City, funding agency, or both. The reporting requirement shall be extended to any certified DBE Subcontractor

8. PREVAILING WAGE RATES: Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

8.1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its subcontractors shall ensure that all workers who perform work under this Contract 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). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

8.1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego 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>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

8.1.2. 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 life of this Contract. 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 and shall apply to this Contract 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 Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

- 8.2. Penalties for Violations.** Contractor 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. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
- 8.3. Payroll Records.** Contractor 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. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City of San Diego's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City of San Diego. Contractor and their subcontractors shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 8.4. Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 8.5. Working Hours.** Contractor and their subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict 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) specify penalties to be imposed on contractors 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.
- 8.6. Required Provisions for Subcontracts.** Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 8.7. Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor 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."
- 8.8. Labor Compliance Program.** The City of San Diego has its own Labor Compliance Program authorized in August 2011 by the DIR. The City of San Diego will withhold contract payments when payroll records are delinquent or deemed inadequate by the City of San Diego or other governmental entity, or it has been established after an investigation by the City of San Diego or other governmental entity that underpayment(s)

have occurred. For questions or assistance, please contact the City of San Diego's Prevailing Wage Unit at 858-627-3200.

8.9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It 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 20103.5 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.

8.8.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in 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 subcontractor pursuant to Public Contract Code section 4107.

8.8.2. By submitting a bid or proposal to the City of San Diego, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City of San Diego at the time of bid or proposal due date or upon request.

8.10. Stop Order. For Contractor or its subcontractors engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractors or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

8.11. List of all Subcontractors. The City of San Diego may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Agreement at any time during performance of this contract, and Contractor shall provide the list within ten (10) working days of the City of San Diego's request. Additionally, Contractor shall provide the City of San Diego with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City of San Diego shall withhold final payment to Contractor until at least 30 days after this information is provided to the City of San Diego.

8.12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

8.11.1. Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1)

8.11.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the Contract. (Labor Code section 1771.4).

8.11.3. List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 9.11 above. (Labor code section 1773.3).

9. DAVIS-BACON WAGE RATES AND PROVISIONS UNDER THE WIFIA PROGRAM:

9.1. DAVIS-BACON PROVISIONS. Contractor shall include the following language in this section in all of its subcontracts for the Project. Contractor and all subcontractors working on the Project shall comply with any provisions herein applicable to contractors and subcontractors, respectively:

9.2. In any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor):

(2) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 paragraph (a)(1)(iv) of this section; 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 § 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 paragraph (a)(1)(ii) of this section) 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)

(B) The WIFIA assistance recipient, the City of San Diego, on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, 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. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore 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 the WIFIA assistance recipient 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 to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30- day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the WIFIA assistance recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the WIFIA assistance recipient shall refer the questions, including the views of all interested parties and the recommendation of the WIFIA assistance recipient, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, 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.

(2) Withholding. the City of San Diego, shall upon written request of the WIFIA Director or 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 accrued 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director 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.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 1(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 1(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.

(ii) {no text here}

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of San Diego. 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 <https://www.dol.gov/agencies/whd/forms/wh347> 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 the City of San Diego, for transmission to the EPA, 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 section 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 the City of San Diego.

(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 § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, 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 Regulations, 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 paragraph (a)(3)(ii)(B) of this section.

(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 paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City of San Diego, EPA, 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, the EPA may, after written notice to the City of San Diego, 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 WHD 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 journeyman 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 WHD Administrator 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 classification of 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 this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(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 shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, 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 29 CFR 5.5.

(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 the City of San Diego, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) 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).

(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).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. 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 work week in which he or she is employed on such work to work in excess of forty 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 forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section 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 paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City of San Diego shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, 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 contractor, 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 paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section 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 paragraphs (b)(1) through (4) of this section.

In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require the City of San Diego to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the City of San Diego, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Note throughout the Construction period of the Project, a representative from the City of San Diego will conduct periodic Labor Standards Interviews with Contractor and Subcontractor construction staff using form *SF-1445, Labor Standards Interviews*, in accordance with the Davis-Bacon Act. This form and interview seek to verify that construction staff are being paid wages as represented in the weekly payrolls submissions to the City of San Diego.

10. WAGE RATES: This Contract shall be subject to the following Davis-Bacon Wage Determination:

9.1. Processor: Upload Current Wage Rates from eCon Wage Rates folder here.

11. AGENCY SPECIFIC DISADVANTAGED BUSINESS ENTERPRISES PROVISIONS:

EPA Requirements:

1. Federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 - Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).
2. The responsive Bid shall conform to GFE to increase DBE awareness of procurement opportunities through race and gender-neutral efforts. Race and gender-neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance.
3. Bidder agrees that it will cooperate with and assist the City of San Diego in fulfilling the DBE Good Faith Effort Requirement achieving "fair share

objectives" and will exercise GFE to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the Bidder shall, in the selection of Subcontractors, and Suppliers for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the affirmative GFE steps.

4. In accordance with EPA's Program for Utilization of Small, Minority Disadvantaged and Women Business Enterprises in procurement under Federal assistance programs, the Contractor agrees to the applicable "fair share objectives" as specified in Attachment D.
5. The provisions in the Contract Documents have been incorporated to prevent unfair practices that adversely affect DBEs.
6. If a DBE Subcontractor fails to complete the Work under the subcontract for any reason, the Contractor shall employ the 6 GFE if soliciting a replacement Subcontractor. The Contractor shall employ the 6 GFE described below even if the Contractor has achieved its fair share objectives.
7. Contractor must maintain proper records demonstrating that the 6 Good Faith Efforts were applied when procuring subcontractors:
8. **Disadvantaged Business Enterprises (DBE) Six Good Faith Efforts:** The contractor must ensure that the DBE's six good faith efforts are used during the procurement of subcontractors for the [Project].
 1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes posting solicitations for bids or proposals for a minimum of 30 Calendar Days (refer to 33 CFR 33.301) before the bid or proposal closing date.
 3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process. Include with the GFE documentation a completed copy of the form AA61, "List of Work Made Available".

4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the Department of Commerce (DOC). See "DBE Potential Resources Centers" Section in a later part these specifications.
6. If the Contractor awards Subcontracts, the Contractor shall take the steps in the paragraphs above.

12. FORMS:

12.1. The following forms shall be completed and submitted within **4 Working Days after the Bid opening by 5 PM**. Failure to include any of the forms shall cause the Bid to be deemed non-responsive.

- a. Form AA61: List of Work Made Available
- b. Form AA62: Summary of Bids Received
- c. Form AA63: Good Faith Effort List of Subcontractors Solicited

12.2. Bidder is to provide the following form to all DBE subcontractors participating on this contract. Submittal of form is dependent on DBE subcontractor and is to be forwarded to the DBE coordinator at any time during the project period of performance.

1. Form 4500-2: DBE Subcontractor Participation Form.

12.3. EPA Form 5700-52A must be completed annually by recipients of financial assistance agreements where the combined total of funds budgeted for procuring supplies, equipment, construction and services exceeds the current Simplified Acquisition Threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1. This reporting requirement applies to all new and existing awards and voids all previous reporting requirements (See instructions).

1. EPA FORM 5700-52A MBE/WBE Utilization Form

15. DBE POTENTIAL RESOURCES CENTERS: Utilization of SBA and MBDA resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs.

1.1. For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. Do not write to these sources

1.2. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.

1.3. Include qualified DBEs on solicitation lists and record the information on Form AA63. Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:

1. <http://www.sba.gov>
 2. <http://www.ccr.gov>
 3. <http://www.mbda.gov>
- 1.4. If DBE sources are not located, explain why and describe the efforts made.
 - 1.5. The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of "good faith" efforts shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.
 - 1.6. A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all sub-bidders, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form AA62. If a low bid was not accepted, an explanation shall be provided.
 - 1.7. Federal Agencies (must be contacted and solicitations posted on their websites): https://eweb1.sba.gov/subnet/common/dsp_login.cfm
<https://www.mbda.gov/business-center/los-angeles-mbda-business-center>
 - 1.8. **State Agencies (must be contacted):** <https://dot.ca.gov/programs/civil-rights/dbe-search> <https://californiaucp.dbesystem.com/>
<https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp> The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

2. AGENCY PECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms with the Bid will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

2.1. All EPA Funded Contracts:

1. Federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 - Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).
2. The responsive Bid shall conform to GFE to increase DBE awareness of procurement opportunities through race and gender neutral efforts. Race and gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance.
3. Bidder agrees that it will cooperate with and assist the City in fulfilling the DBE Good Faith Effort Requirement achieving "fair share objectives" and will exercise GFE to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the Bidder shall, in the selection of Subcontractors, and Suppliers for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the affirmative GFE steps.

4. In accordance with EPA's Program for Utilization of Small, Minority Disadvantaged and Women Business Enterprises in procurement under Federal assistance programs, the Contractor agrees to the applicable "fair share objectives" as specified in the Notice Inviting Bids.
5. The provisions in the Contract Documents have been incorporated to prevent unfair practices that adversely affect DBEs.
6. If a DBE Subcontractor fails to complete the Work under the subcontract for any reason, the Contractor shall employ the 6 GFE if soliciting a replacement Subcontractor. The Contractor shall employ the 6 GFE described below even if the Contractor has achieved its fair share objectives.
7. Good Faith Efforts:
 - a) The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The "Good Faith" effort requires the Contractor and any Subcontractors to take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services even if the Contractor has achieved its fair share objectives.
 - b) If the Contractor awards subcontracts, it shall require the Subcontractors to take the steps in these specifications.
 - c) For the EPA defined GFE, see the steps below:
 1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 days before the bid or proposal closing date.
 3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process. Include with the GFE documentation a completed copy of the form AA61, "List of Work Made Available."
 4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

5. Use the services and assistance of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the Department of Commerce (DOC). See "DBE Potential Resources Centers" Section in a later part these specifications.
6. If the Contractor awards Subcontracts, the Contractor shall take the steps in paragraphs (1) through (5) above.

2.1.1. Semiannual DBE Utilization Reporting:

The Contractor shall report to the City on a semiannual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise Subcontractors and Suppliers using EPA Form 5700-52A.

2.1.2. Clean Water State Revolving Fund (CWSRF) Projects Only:

2.1.3. For contracts subject to CWSRF, refer to Subsection 18.1, "All EPA Funded Contracts" above and the following:

2.1.4. The Bidder shall take affirmative steps prior to Bid opening to assure that MBE's and WBE's are used whenever possible as sources of supplies, construction and services.

2.1.5. The affirmative steps are defined for contracts funded by the California State Water Resources Control Board as follows:

1. Utilization of SBA and MBDA resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs. SBA's database is <http://www.ccr.gov/>
2. For additional assistance, the Contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. There are contact phone numbers listed in Step 3 that will assist you in reaching the 2 offices if the Internet is unavailable. Do not write to these sources.
3. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE Subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.
4. Include qualified DBEs on solicitation lists (CWSRF Form 1) and record the information. Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:
 1. <http://www.sba.gov>

2. <http://www.ccr.gov>
3. <http://www.mbda.gov>
5. If DBE sources are not located, explain why and describe the efforts made.
6. The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of the Work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of GFE shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.
7. A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all Subcontractors, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form 5. If a low bid was not accepted, an explanation shall be provided.
8. See "DBE Potential Resources Centers" Section in a later part these specifications.

3. DBE POTENTIAL RESOURCES CENTERS:

- 3.1. Utilization of SBA and MBDA resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs.
- 3.2. For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. Do not write to these sources
- 3.3. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.
- 3.4. Include qualified DBEs on solicitation lists and record the information on Form 1.

Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:

1. <http://www.sba.gov>
 2. <http://www.ccr.gov>
 3. <http://www.mbda.gov>
- 3.5. If DBE sources are not located, explain why and describe the efforts made.
 - 3.6. The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of "good

faith” efforts shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.

- 3.7.** A regular letter or an unanswered telephone call is not an adequate “good faith” effort. A list of all sub-bidders, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form 5. If a low bid was not accepted, an explanation shall be provided.

4. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

- 4.1.** The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it.
- 4.2.** The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

5. FORMS:

- 5.1.** The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

- 5.1.1. E-BIDDING FORMS** - The following CWSRF forms shall be completed and submitted within **4 Working Days of the Bid** opening. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

1. 4500-3 DBE Subcontractor Performance Form
2. 4500-4 DBE Subcontractor Utilization Form
3. EPA Form 5700-52A: MBE/WBE Utilization Forms
4. Form AA61: List of Work Made Available
5. CWSRF Form 1: Good Faith Effort List of Subcontractors Solicited
6. CWSRF Form 2: Good Faith Effort Bids Received List
7. CWSRF Form 3: DBE/Contractor Certification
8. CWSRF Form 4: DBE Prime Contractor/Recipient Selected
9. CWSRF Form 5: Summary of Bids Received from Subcontractors, Suppliers and Brokers

6. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms with the Bid will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

6.1. All EPA Funded Contracts:

6.1.1. Safe Drinking Water State Revolving Fund (SDWSRF) Contracts:

6.1.2. For contracts subject to SDWSRF, refer to Subsection 22.1, "All EPA Funded Contracts" above and the following:

1. Each Bid shall include submission of Disadvantaged Business Enterprise Information Form, identifying each proposed Subcontractor and Supplier for the Project.
2. Using the Disadvantaged Business Enterprise Information Form, the Bidder shall provide the following information for each proposed Subcontractor and Supplier:
 1. firm's name;
 2. contact person;
 3. entity's mailing address,
 4. telephone number;
 5. e-mail address;
 6. the procurement on which the proposed Subcontractor and Supplier quoted, and when; and
 7. proposed Subcontractor and Supplier status as a DBE or non-DBE.
3. The Apparent Low Bidder shall submit documentation showing that, prior to Bid opening, the required GFE was made. The documentation shall be received by the City within **4 Working Day** following Bid opening, except the Disadvantaged Business Enterprise Information Form, which is to be submitted with the Bid. Failure to submit Disadvantaged Business Enterprise Information Form with the Bid will cause the Bid to be rejected as **non-responsive**.
4. If the Apparent Low Bidder is rejected or considered as non-responsive or has any non-responsive low DBE Subcontractor, a complete explanation must be provided to the City.
5. Using the Verification of Qualification form below, Apparent Low Bidder shall provide evidence of certification by a federal, state, or local government entity for each DBE firm to be utilized. Such certification documentation shall be submitted within 4 Working Days following bid opening.
6. If additional procurement becomes necessary after the Award of the Contract, the GFE shall be applied, and, if DBE Subcontracts are awarded, Verification of Qualification shall be provided to the City by the Contractor within 10 Working Days following the award of each new Subcontract.
7. Any deviation from the information contained in Disadvantaged Business Enterprise Information Form shall not result in a reduction of DBE participation without prior approval of the City.
8. Failure of the Apparent Low Bidder to perform the 6 affirmative GFE steps prior to Bid opening, to submit Disadvantaged Business Enterprise Information Form with its bid, or both will lead to Bid being declared non-responsive. The City may then award the contract to the next low responsive, responsible Bidder meeting the requirements of these contract provisions.
9. The Contractor shall provide each proposed Subcontractor and Supplier

copies of EPA Form 6100-2 and EPA Form 6100-3.

10. See "DBE Potential Resources Centers" Section in a later part these specifications.

6.1.3. Semiannual DBE Utilization Reporting:

The Contractor shall report to the City on a semiannual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise Subcontractors and Suppliers using EPA Form 5700-52A.

7. DBE POTENTIAL RESOURCES CENTERS:

7.1. Utilization of SBA and MBDA resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs.

7.2. For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. Do not write to these sources

7.3. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.

7.4. Include qualified DBEs on solicitation lists and record the information on Form AA63. Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:

1. <http://www.sba.gov>
2. <http://www.ccr.gov>
3. <http://www.mbda.gov>

7.5. If DBE sources are not located, explain why and describe the efforts made.

7.6. The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of "good faith" efforts shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.

7.7. A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all sub-bidders, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form AA62. If a low bid was not accepted, an explanation shall be provided.

8. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

8.1. The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it.

8.2. The Contractor shall maintain the records documenting compliance with

requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

9. FORMS:

9.1. The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as Sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms:

9.1.1. E-BIDDING FORMS - The following forms shall be completed and submitted within **4 Working Days of the Bid opening**. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

1. 4500-3 DBE Subcontractor Performance Form
2. 4500-4 DBE Subcontractor Utilization Form
3. EPA Form 5700-52A MBE/WBE Utilization Forms
4. SDWSRF DBE Information Form
5. SDWSRF Verification of Qualification
6. Form AA61 List of Work Made Available
7. Form AA62 Summary of Bids Received
8. Form AA63 Good Faith Effort List of Subcontractors Solicited

10. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms located in Volume 2 with the Bid will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

10.1. HUD Requirements

10.1.1. Affirmative Good Faith Effort Steps shall include the steps listed at 24 CFR 85.36(e)(2), set forth below:

1. Placing qualified DBE business enterprises on solicitation lists;
2. Assuring that DBE 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 DBE business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by DBE business enterprises;
5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the Subcontractors to take the affirmative steps listed in this section.

11. See "DBE Potential Resources Centers" Section in a later part these specifications. Include

a completed copy of the form AA61, "List of Work Made Available" with the GFE documentation.

12. DBE POTENTIAL RESOURCES CENTERS:

- 12.1. Utilization of SBA and MBDA resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs.
- 12.2. For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. Do not write to these sources
- 12.3. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.
- 12.4. Include qualified DBEs on solicitation lists and record the information on Form AA63. Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:
 1. <http://www.sba.gov>
 2. <http://www.ccr.gov>
 3. <http://www.mbda.gov>
- 12.5. If DBE sources are not located, explain why and describe the efforts made.
- 12.6. The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of "good faith" efforts shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.
- 12.7. A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all sub-bidders, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form AA62. If a low bid was not accepted, an explanation shall be provided.

13. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

- 13.1. The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it.
- 13.2. The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.
- 13.3. FORMS: The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms:

13.4. E-BIDDING FORMS - The following forms shall be completed and submitted within **4 Working Days of the Bid opening**. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

1. Form AA61 List of Work Made Available
2. Form AA62 Summary of Bids Received
3. Form AA63 Good Faith Effort List of Subcontractors Solicited

14. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms with the Bid will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

14.1. DOE Requirements:

14.1.1. The Contractor shall take all necessary affirmative steps listed in 10 CFR600.236(e)(2)(i) through (vi) to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

14.1.2. Affirmative GFE 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;
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the Subcontractors, if subcontracts are to be let, to take the affirmative steps listed in this section.
7. The City will only accept certifications for the mandatory goals determined by the Department of Energy from the U.S. Small Business Administration (SBA) and the U.S. Department of Commerce Minority Business Development Agency (MBDA). Failure to solicit subcontractors from these agencies and to advertise for the required certifications will result in a bid deemed non compliant with the affirmative steps and therefore will be deemed **non-responsive**.
8. See "DBE Potential Resources Centers" Section in a later part these specifications. Include a completed copy of the form AA61, "List of Work Made Available" with the GFE documentation.

15. DBE POTENTIAL RESOURCES CENTERS:

15.1. Utilization of SBA and MBDA resources is required at no cost. These agencies offer

several services, including Internet access to databases of DBEs.

- 15.2. For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. Do not write to these sources
- 15.3. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.
- 15.4. Include qualified DBEs on solicitation lists and record the information on Form AA63. Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:
 1. <http://www.sba.gov>
 2. <http://www.ccr.gov>
 3. <http://www.mbda.gov>
- 15.5. If DBE sources are not located, explain why and describe the efforts made.
- 15.6. The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of "good faith" efforts shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.
- 15.7. A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all sub-bidders, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form AA62. If a low bid was not accepted, an explanation shall be provided.

16. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

- 16.1. The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it.
- 16.2. The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

17. FORMS:

- 17.1. The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

17.1.1. E-BIDDING FORMS - The following forms shall be completed and submitted within **4 Working Days of the Bid opening**. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

1. Form AA61 List of Work Made Available
2. Form AA62 Summary of Bids Received
3. Form AA63 Good Faith Effort List of Subcontractors Solicited

18. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms with the Bid will lead to the Bid being declared

non-responsive and, therefore, shall be rejected.

18.1. DOI Funded Contracts:

18.1.1. The Contractor shall take all necessary affirmative GFE steps listed in 43 CFR12.76(e)(2)(i) through (vi) to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

18.1.2. Affirmative GFE 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;
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the Subcontractors, if subcontracts are to be let, to take the affirmative steps listed in this section.
7. DBE Potential Resources Centers. See "DBE Potential Resources Centers." Include a completed copy of the form AA61, "List of Work Made Available" with the GFE documentation.

19. DBE POTENTIAL RESOURCES CENTERS:

19.1. Utilization of SBA and MBDA resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs.

- 19.2. For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. Do not write to these sources.
- 19.3. The Contractor shall provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least 15 Working Days prior to Bid opening and solicitation to DBE subcontractors at least 10 Working Days prior to Bid opening. Documentation shall not only include the efforts to contact the information sources and list the Contract opportunity, but also the solicitation and response to the bid request.
- 19.4. Include qualified DBEs on solicitation lists and record the information on Form AA63. Solicitation shall be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs:
1. <http://www.sba.gov>
 2. <http://www.ccr.gov>
 3. <http://www.mbda.gov>
- 19.5. If DBE sources are not located, explain why and describe the efforts made.
- The Contractor shall send invitations to at least 3 (or all, if less than 3) DBE vendors for each item of work referred by sources contacted. The invitations shall adequately specify the items for which bids are requested. The record of "good faith" efforts shall indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation.
- 19.6. A regular letter or an unanswered telephone call is not an adequate "good faith" effort. A list of all sub-bidders, including the bidders not selected and non DBE Subcontractors, and bid amount for each item of the Work shall be submitted on Form AA62. If a low bid was not accepted, an explanation shall be provided. Federal Agencies (must be contacted and solicitations posted on their websites):

20. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

- 20.1. The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it.
- 20.2. The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

21. FORMS:

- 21.1. The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

21.2. E-BIDDING FORMS - The following forms shall be completed and submitted within **4 Working Days of the Bid opening**. Failure to include any of the forms shall cause the Bid to be deemed non-responsive.

1. Form AA61 List of Work Made Available
2. Form AA62 Summary of Bids Received
3. Form AA63 DBE Good Faith Effort List of Subcontractors Solicited

22. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms with the Bid will lead to the Bid being declared

non-responsive and, therefore, shall be rejected.

22.1. FAA Funded Contracts:

22.1.1. All projects funded by the U.S. Department of Transportation Federal Aviation Administration [FAA] are subject to the equal opportunity requirements set forth at 49 CFR Part 26, as well as the following Federal Requirements.

22.1.2. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. The provision shall be included in any agreements between Contractor and any Subcontractor.

22.1.3. To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the City specifies a goal for Disadvantaged Business Enterprises (DBEs)

22.1.4. The Bidder shall make Work available to DBEs and select Work parts consistent with available DBE Subcontractors and Suppliers.

22.1.5. The Bidder Proposer shall meet the DBE goal shown in the Notice Inviting Bids or demonstrate that it made adequate GFE to meet this goal. Include a completed copy of the Form AA61, "List of Work Made Available" with the GFE documentation.

22.1.6. It is the Bidder's responsibility to verify that the DBE is certified as DBE at date of Bid opening or Proposal due date. For a list of DBEs certified by the California Unified Certification Program, go to: http://www.dot.ca.gov/hq/bep/find_certified.htm.

22.1.7. Only DBE participation will count towards the DBE goal. DBE participation will count towards the City's Annual Anticipated DBE Participation Level (AADPL) and the California statewide goal.

22.1.8. Credit for materials or supplies Contractor purchases from DBEs counts towards the goal in the following manner:

1. 100% counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60% counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

22.1.9. The Contractor or Subcontractor will receive credit towards the goal if
 the Contractor or Subcontractor employs a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55.

22.1.10. Subcontracting Participation Goals:

1. The Bidders are encouraged to take positive steps to diversify and expand their subcontractor solicitation base and to offer contracting opportunities to all eligible DBE certified Subcontractors. To support its Equal Opportunity Contracting commitment, the City has implemented a race-conscious and race neutral project specific goal methodology required for all FAA funded projects.
2. The Bidder is required to meet the Project specific percentages for DBE's as outlined in the Notice Inviting Bids or satisfy good faith documentation requirements.
3. The Bidder shall make good faith efforts, as defined in these specifications to meet the contract goal for DBE participation in the performance of this contract.

22.1.11. The Bidder shall include the City's DBE Policy Statement in all its Subcontracts.

23. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

23.1. The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it.

23.2. The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

24. FORMS:

24.1. The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

24.2. E-BIDDING FORMS - The following forms shall be completed and submitted within **4 Working Days of the Bid opening**. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

1. Form AA61 List of Work Made Available

25. APPENDIX:

1. DBE Policy Statement For FAA Contracts Only

26. AGENCY SPECIFIC PROVISIONS:

Note: Failure to comply with these specifications e.g., taking the specified steps prior to Bid opening, and to submit the forms located in Volume 2 with the Bid will lead to the Bid being declared **non-responsive** and, therefore, shall be rejected.

26.1. FHWA Requirements (Contracts via Caltrans)

26.1.1. The Bidders' attention is directed to the provisions in Section 2, "Bidding," of the Caltrans Standard Specifications and conditions which the bidder must observe in the preparation of and the submission of the bid.

26.1.2. Bidders shall be fully informed with respect to the requirements of the DBE Regulations and take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) have opportunity to participate in the contract.

26.1.3. The Contractors are encouraged to take positive steps to diversify and expand their subcontractor solicitation base and to offer contracting opportunities to all eligible DBE certified Subcontractors. To support its Equal Opportunity Contracting commitment, the City has implemented a project specific goal methodology required for all Caltrans funded projects.

26.1.4. See the Notice Inviting Bids for the Subcontracting Participation requirements.

26.1.5. The Bidder's attention is directed to the provisions in Section 5, "Control of Work," of the Caltrans Standard Specifications and conditions which the bidder must observe in the preparation of and the submission of the bid.

26.1.6. The Contractor shall complete the following forms and shall submit the forms in accordance with the Caltrans Standard Specifications:

1. Final Report – Utilization of DBE, First Tier Subcontractors
2. Monthly DBE Trucking Verification
3. Exhibit 15-G Local Agency Bidder DBE Commitment
4. Subcontracting Request
5. Exhibit 15-H DBE Information-Good Faith Efforts

6. DBE Certification Status Change
7. FHWA PR-1391

27. GOOD FAITH EFFORT DOCUMENTATION SUBMITTALS:

- 27.1.** The affirmative GFE steps documentation shall be submitted **within 4 Working Days of the Bid Opening**. If this documentation is not submitted when due, the City will declare the Bid **non-responsive** and reject it
- 27.2.** The Contractor shall maintain the records documenting compliance with requirements including documentation of its GFE and data relied upon in formulating its fair share objectives.

28. FORMS:

28.1. The Contractor shall demonstrate that efforts were made to attract DBEs on this contract. The Contractor and Subcontractors shall take the steps listed in these specifications to assure that DBEs are used whenever possible as sources of supplies, construction, equipment, or services. In addition to the specified GFE documentation, the Bidder shall submit the following forms.

28.1.1. E-BIDDING FORMS - The following forms shall be completed and submitted within **4 Working Days of the Bid opening**. Failure to include any of the forms shall cause the Bid to be deemed **non-responsive**.

1. Final Report – Utilization of DBE, First Tier Subcontractors
2. Monthly DBE / DBE Trucking Verification
3. Exhibit 15 G - Local Agency Bidder DBE Commitment (Construction Contracts)
4. Subcontracting Request
5. Exhibit 15-H DBE Information-Good Faith Efforts
6. DBE Certification Status Change
7. FHWA PR-1391

FUNDING AGENCY PROVISIONS

FORMS

FOR REFERENCE ONLY



**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. A Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid / Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity	

Contract Item Number	Description of Work Submitted from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
—	—	—
DBE Certified By: ___ DOT ___ SBA Other: _____		Meets/exceeds EPA certification standards? YES NO Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.
² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an award of financial assistance.

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Do not send the completed form to this

FORM 4500-3 (DBE Subcontractor Performance Form)

Revised 12/2016



Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractor's² and the estimated dollar amount of each subcontract. A Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid / Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity			

I have identified potential DBE certified subcontractors. YES NO If yes, please complete the table below. If no, please explain: _____

Subcontractor Name/ Company Name	Company Address / Phone / Email	Estimated Dollar Amount	Currently DBE Certified?

--Continue on back if needed--

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an award of financial assistance.

FORM 4500-4 (DBE Subcontractor Utilization Form)

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	

FOR REFERENCE ONLY

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Do not send the completed form to this

FORM 4500-4 (DBE Subcontractor Utilization Form)

Revised 12/2016

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

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

1A. FEDERAL FISCAL YEAR (Oct. 1-Sep 30), _____		1B. REPORTING PERIOD (Check ALL appropriate boxes) <input type="checkbox"/> 1 st (Oct-Dec) <input type="checkbox"/> 2 nd (Jan-Mar) <input type="checkbox"/> 3 rd (Apr-Jun) <input type="checkbox"/> 4 th (Jul-Sep) <input type="checkbox"/> Semi-Annual (Oct-Mar) <input type="checkbox"/> Semi-Annual (Apr-Sep) <input type="checkbox"/> Annual <input type="checkbox"/> Check if this is the last report for the project (Project completed).	
1C. REVISION OF A PRIOR REPORT? <input type="checkbox"/> Yes <input type="checkbox"/> No Year: _____ Quarter: _____		BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:	
2A. EPA FINANCIAL ASSISTANCE OFFICE ADDRESS (ATTN: DBE Coordinator):		3A. RECIPIENT NAME AND ADDRESS	
2B. EPA DBE COORDINATOR Name: E-mail:	2C. PHONE: Fax:	3B. RECIPIENT REPORTING CONTACT: Name: E-mail:	3C. PHONE: Fax:
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.)		4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM TITLE or CFDA NUMBER:	
5A. TOTAL ASSISTANCE AGREEMENT AMOUNT (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.) EPA Share: \$ _____ Recipient Share: \$ _____		5B. If NO procurement and NO accomplishments were made this reporting period (by the recipients, sub-recipients, loan recipients, and prime contractors), CHECK and SKIP to Block No. 7. (Procurements are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. Accomplishments, in this context, are procurements made with MBEs and/or WBEs. <input type="checkbox"/>	
5C. Total Procurements This Reporting Period (Only include amount not reported in any prior reporting period) Total Procurement Amount \$ _____ (Include total dollar values awarded by recipient, sub-recipients and SRF loan recipients, including MBE/WBE expenditures.)			
5D. Were sub-awards issued under this assistance agreement? Yes <input type="checkbox"/> No <input type="checkbox"/> Were contracts issued under this assistance agreement? Yes <input type="checkbox"/> No <input type="checkbox"/>			
5E. MBE/WBE Accomplishments This Reporting Period Actual MBE/WBE Procurement Accomplished: (Include total dollar values awarded by recipient, sub-recipients, SRF loan recipients and Prime Contractors.)			
	Construction	Equipment	Services
	Supplies	Total	
\$MBE:	_____	_____	_____
\$WBE:	_____	_____	_____
6. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.)			
7. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE		TITLE	
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE		DATE	

PART II.

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD

EPA Financial Assistance Agreement Number: _____

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Procurement MM/DD/YY	5. Type of Product or ServicesA (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

Type of product or service codes:

1 = Construction

2 = Supplies

3 = Services

4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

EPA FORM 5700-52A - (Approval Expires 12/22/13)

Instructions:

A. General Instructions:

MBE/WBE utilization is based on 40 CFR Part 33. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report 30 days after the end of each federal fiscal quarter, semiannually, or annually, per the terms and conditions of the financial assistance agreement.

	Quarterly Reporting Due Date	Semiannual Reporting Due Date	Annual Reporting Due Date
Agreements awarded prior to May 27, 2008	January 30, April 30, July 30, October 30	N/A	October 30
Agreements awarded on or after May 27, 2008	N/A	April 30, October 30	October 30

MBE/WBE program requirements, including reporting, are material terms and conditions of the financial assistance agreement.

B. Definitions:

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

A **contract** is a written agreement between an EPA recipient and another party (also considered “prime contracts”) and any lower tier agreement (also considered “subcontracts”) for equipment, services, supplies, or construction necessary to complete the project. This definition excludes written agreements with another public agency. This definition includes personal and professional services, agreements with consultants, and purchase orders.

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

subcontractor for EPA recipients under EPA’s DBE Program, an entity must be properly certified as required by 40 CFR Part 33, Subpart B.

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

A **woman business enterprise (WBE)** is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women and (2) whose daily business operations are managed and directed by one or more of the women owners. In order to qualify and participate as a WBE prime or subcontractor for EPA recipients under EPA’s DBE Program, an entity must be properly certified as required by 40 CFR Part 33, Subpart B.

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

Good Faith Efforts

A recipient is required to make the following Good Faith Effort whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement. These Good Faith Effort for utilizing MBEs and WBEs must be documented. Such documentation is subject to EPA review upon request:

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

C. Instructions for Part I:

- 1a. Specify Federal fiscal year this report covers. The Federal fiscal year runs from October 1st through September 30th (e.g. **November 29, 2010 falls within Federal fiscal year 2011**)
- 1b. Check applicable reporting box, quarterly, semiannually, or annually. Also indicate if this is the last report for the project.
- 1c. Indicate if this is a revision to a previous year, half-year, or quarter, and provide a brief description of the revision you are making.
- 2a-c. Please refer to your financial assistance agreement for the mailing address of the EPA financial assistance office for your agreement.

The "EPA DBE Reporting Contact" is the DBE Coordinator for the EPA Region from which your financial assistance agreement was originated. For a list of DBE Coordinators please refer to the EPA OSBP website at www.epa.gov/osbp. Click on "Regional Contacts" for the name of your coordinator.

- 3a-c. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.
- 4a. Provide the Assistance Agreement number assigned by EPA. A separate report must be submitted for each Assistance Agreement.

***For SRF recipients:** In box 4a list numbers for ALL OPEN Assistance Agreements being reported on this form. Please note that although the New DBE Rule (which took effect May 27, 2008) revised the reporting frequency requirements from quarterly to semiannually, that change only applies to agreements awarded AFTER the New DBE Rule took effect. Therefore, SRF recipients may either continue to report activity for all Agreements on one form on a quarterly basis until the last award that was made prior to the New DBE Rule has been closed out; OR, the recipient may split the submission of SRF reports into quarterly reports for Agreements awarded prior the New DBE Rule, and semiannually for the awards made after the New DBE Rule.

- 4b. Refer back to Assistance Agreement document for this information.
- 5a. Provide the total amount of the Assistance Agreement which includes Federal funds plus recipient matching funds and funds from other sources.

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

- 5b. Self-explanatory.
- 5c. Provide the total dollar amount of ALL procurements awarded this reporting period by the recipient, sub-recipients, and SRF loan recipients, **including** MBE/WBE expenditures. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/ procurement centers).

***NOTE:** To prevent double counting on line 5C, if any amount on 5E is for a subcontract and the prime contract has already been included on Line 5C in a prior reporting period, then report the amount going to MBE or WBE subcontractor on line 5E, but exclude the amount from Line 5C. To include the amount on 5C again would result in double counting because the prime contract, which includes the subcontract, would have already been reported.

- 5d. State whether or not sub-awards and/or subcontracts have been issued under the assistance agreement by indicating "yes" or "no".
- 5e. Where requested, also provide the total dollar amount of all MBE/WBE procurement awarded during this reporting period by the recipient, sub-recipients, SRF loan recipients, and prime contractors in the categories of construction, equipment, services and supplies. These amounts include Federal funds plus recipient matching funds and funds from other sources.

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

6. If there were no MBE/WBE accomplishments this reporting period, please briefly explain what specific steps you are taking to achieve the MBE/WBE requirements specified in the terms and conditions of the Assistance Agreement.
7. Name and title of official administrator or designated reporting official.
8. Signature, month, day, and year report submitted.

D. Instructions for Part II:

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

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, not the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.

**This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31, and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

Clean Water State Revolving Fund Loan Program DBE Instructions

FORM 3

DISADVANTAGE BUSINESS ENTERPRISE (DBE)

CONTRACTOR CERTIFICATION

Firm Name:		Phone:	
Address:			
Principal Service or Product:	Bid Amount \$		
PLEASE INDICATE PERCENTAGE OF OWNERSHIP			
D DBE ____% Ownership			
D Prime Contractor		D Supplier of Material/Service	
D Subcontractor		D Broker	
D Sole Ownership		D Corporation	
D Partnership		D Joint Venture	
Certified by:		Title:	
DBE Sub (ORIGINAL SIGNATURE AND DATE REQUIRED)			
Name:	Date:		

IMPORTANT: CONTRACTORS CAN NO LONGER SELF-CERTIFY. THEY MUST BE CERTIFIED BY EPA, SMALL BUSINESS ADMINISTRATION (SBA), DEPARTMENT OF TRANSPORTATION (DOT) OR BY STATE, LOCAL, TRIBAL OR PRIVATE ENTITIES WHOSE CERTIFICATION CRITERIA MATCH EPA'S. PROOF OF CERTIFICATION MUST BE PROVIDED. A COPY OF THE CONTRACTOR CERTIFICATION MUST BE SUBMITTED WITH THIS FORM.

THIS FORM MUST BE SUBMITTED WITHIN 4 WORKING DAYS AFTER THE BID OPENING DATE.

January 2009

**Clean Water State Revolving Fund Loan Program DBE Instructions
FORM 4 (Attachment B)**

PRIME CONTRACTOR/RECIPIENT

SELECTED DISADVANTAGE BUSINESS ENTERPRISE (DBE)

CONTRACT RECIPIENTS NAME:		CONTRACT NO. OR SPECIFICATION NO.:	
PROJECT DESCRIPTION:		PROJECT LOCATION:	
PRIME CONTRACTOR INFORMATION			
NAME AND ADDRESS (Include Zip Code, Federal Employer Tax ID #):		AMOUNT OF CONTRACT \$	
PHONE:			
DBE INFORMATION			
NONE*			
DBE		NAME AND ADDRESS (INCLUDE ZIP CODE)	
SUBCONTRACTOR JOINT VENTURE	SUPPLIER/SERVICE BROKER	PHONE:	
AMOUNT OF CONTRACT \$			
WORK TO BE PERFORMED			
DBE		NAME AND ADDRESS (INCLUDE ZIP CODE)	
SUBCONTRACTOR JOINT VENTURE	SUPPLIER/SERVICE BROKER	PHONE:	
AMOUNT OF CONTRACT \$			
WORK TO BE PERFORMED			
DBE		NAME AND ADDRESS (INCLUDE ZIP CODE)	
SUBCONTRACTOR JOINT VENTURE	SUPPLIER/SERVICE BROKER	PHONE:	
AMOUNT OF CONTRACT \$			
WORK TO BE PERFORMED			
TOTAL DBE AMOUNT: \$ _____			
SIGNATURE OF PERSON COMPLETING FORM: _____			
TITLE: _____ PHONE: _____ DATE: _____			

***Negative reports are required. ORIGINAL SIGNATURE AND DATE REQUIRED. Failure to complete and submit this form within 4 Working Days of bid opening will cause bid to be rejected as non-responsive.** January 2009

DISADVANTAGED BUSINESS ENTERPRISE INFORMATION FORM

WATER SYSTEM NAME:	WATER SYSTEM NUMBER-PROJECT NUMBER:
PROJECT DESCRIPTION:	PROJECT LOCATION:

PRIME CONTRACTOR INFORMATION

NAME/ADDRESS: Name of firm Contact person Address, City, Zip Phone Email <input type="checkbox"/> DBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> OTHER	TYPE OF CONTRACT <input type="checkbox"/> ARCHITECT/ENGINEER(A/E) <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> SUPPLIER/SERVICE (S/S)
AMOUNT OF CONTRACT/BID: _____ \$	

SUBCONTRACTOR INFORMATION

<input type="checkbox"/> DBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> OTHER <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> SUPPLIER/SERVICE <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> BROKER	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone Email
TYPE OF CONTRACT	
CONTRACT AMOUNT \$	
<input type="checkbox"/> DBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> OTHER <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> SUPPLIER/SERVICE <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> BROKER	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone Email
TYPE OF CONTRACT	
CONTRACT AMOUNT \$	
<input type="checkbox"/> DBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> OTHER <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> SUPPLIER/SERVICE <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> BROKER	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone Email
TYPE OF CONTRACT	
CONTRACT AMOUNT \$	

SUBCONTRACTING PARTICIPATION PERCENTAGES FOR MBE & WBE PARTICIPATION

	% MBE	% WBE
Construction	14%	6%
Equipment	13%	19%
Services	31%	32%
Supplies	22%	14%

FORM COMPLETED BY:		
NAME	TITLE	PHONE
SIGNATURE	DATE	EMAIL

DBE Contractor Information Form (06/09 rev)

Additional pages attached



Failure to complete and submit this form with bid - Will cause the bid to be rejected as non-responsive

MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE)¹
VERIFICATION OF QUALIFICATION

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
 DIVISION OF DRINKING WATER AND ENVIRONMENTAL MANAGEMENT

Firm Name:	Phone:		
Address:			
Principal Service or Product:			
<input type="checkbox"/> - MBE <input type="checkbox"/> - WBE			
<input type="checkbox"/> - Prime Contractor <input type="checkbox"/> - Supplier of Material/Service <input type="checkbox"/> - Subcontractor <input type="checkbox"/> - Broker			
<input type="checkbox"/> - Sole Ownership <input type="checkbox"/> - Corporation <input type="checkbox"/> - Partnership <input type="checkbox"/> - Joint Venture			
Names of Owners	Percent Ownership	MBE- Ethnic Identity ¹	WBE
Agency Certifying MBE/WBE Qualification			
Certifying Agency Address	Certifying Agency Phone		
Certification number	Date Certified		
Submitted by:	Date		

¹Refer to definitions on next page

MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE)

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

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

MINORITY INDIVIDUALS INCLUDE:

(a) American Indians

Persons having origins in any of the original peoples of North America. To qualify in this group, a person shall be a citizen of the United States and meet one or more qualifying criteria including:

- (1) Be at least one-fourth Indian descent (as evidenced by registration with the Bureau of Indian Affairs);
- (2) Characteristic Indian name;
- (3) Recognition in the community as an Indian;
- (4) Membership in a tribe, band or group of American Indians (recognized by the Federal Government), as evidenced by a tribal enrollment number or similar indication; and
- (5) Characteristic Indian appearance and features.

(b) Black Americans

U.S. citizens, other than Hispanic, having origins in any of the black racial groups of Africa.

(c) Asian Americans

U.S. citizens having origins in any of the original peoples of the Far East, Southern Asia, the Indian subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa. The Indian subcontinent takes in the countries of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.

(d) Hispanic Americans

U.S. citizens of Mexican, Puerto Rican, Cuban, or other Spanish culture or origin, regardless of race. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in this category. Persons from Brazil, Guyana, Surinam or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category. In addition, the category does not include persons from Portugal, who should be classified according to race.

(e) American Eskimos and American Aleuts

CDPH MBEWBE Verification Form (11/2010 mv)

LIST OF WORK MADE AVAILABLE

List items of the Work the Bidder made available to DBE firms. Identify those items of the Work the Bidder might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar amount and percentage of the Base Bid. The Bidder must demonstrate that enough work to meet the goal was made available to DBE firms.

ITEM OF WORK MADE AVAILABLE	NAICS CODE	BIDDER NORMALLY PERFORMS ITEM (Y/N)	ITEM BROKEN DOWN TO FACILITATE PARTICIPATION (Y/N)	AMOUNT	PERCENTAGE OF BASE BID

FOR REFERENCE

Provided or referred Section 3 Workers to services supporting job readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
 FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES
 FIRST-TIER SUBCONTRACTORS
 CEM-2402F (REV 7/2012)

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.

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NUMBER.		ADMINISTERING AGENCY	CONTRACT COMPLETION DATE	
PRIME CONTRACTOR				BUSINESS ADDRESS			ESTIMATED CONTRACT AMOUNT \$		
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS			DATE WORK COMPLETE	DATE OF FINAL PAYMENT	
				NON-DBE	DBE	UDBE			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
ORIGINAL COMMITMENT \$ _____				Total	\$	\$	\$		

ORIGINAL COMMITMENT
 \$ _____
 DBE/UDBE

List all First Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) and underutilized DBEs (UDBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual UDBE utilization (or item of work) was different than that approved at the time of award, provide comments on the following page after the instructions. List actual amount paid to each entity.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

CONTRACTOR REPRESENTATIVE'S SIGNATURE		BUSINESS PHONE NUMBER	DATE
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED			
RESIDENT ENGINEER'S SIGNATURE		BUSINESS PHONE NUMBER	DATE

COPY DISTRIBUTION - Caltrans contracts: Original - District Construction Copy- Contractor Copy - Resident Engineer Copy Resident Engineer
 Copy Distribution-Local Agency contracts: Original - Local Agency Resident Engineer (submitted with the Report of Expenditure) Copy- District Local Assistance Engineer Copy- Local Agency file

Instructions

Contracts advertised on or before June 15, 2012 may contain Underutilized Disadvantaged Business Enterprise goals (UDBE). Participation for UDBE firms must be reported in the UDBE column. Contracts advertised after June 15, 2012 may contain Disadvantaged Business Enterprise (DBE) goals. Participation for contracts advertised after June 15, 2012 must be reported as DBE.

This form has three columns for entering the dollar value for the item(s) of work performed or provided by the firm. The Non-DBE column is used to enter the dollar value of work performed by first-tier subcontracting firms who are not certified as a DBE or UDBE.

The DBE column is used to enter the dollar value of work performed by firms that do not fall into the UDBE category as defined below. The UDBE column is used to enter the dollar value of work performed by firms who fall under one of the following underutilized groups:

- Black American
- Asian Pacific American
- Native American
- Women

DBE and UDBE prime contractors are required to show the corresponding dollar value of work performed by their own forces.

If a firm performing work as a DBE or UDBE on the project becomes decertified and still performs work after the decertification date, enter the total value performed by this firm under the appropriate DBE and UDBE identification column. If a subcontractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column. Any changes to DBE certification must also be submitted on Form CEM-2403F.

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the final payment to the firm for the portion of work listed as being completed). DBE and UDBE prime contractors are required to show the date of work performed by their own forces.

Use the comments section to explain any differences in the original commitment and the final utilization of DBE and UDBE firms.

The contractor and the resident engineer sign and date the form indicating that the information provided is completed and correct and the DBE paperwork and worksites have been monitored for participation.

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION
MONTHLY DBE/DBE TRUCKING VERIFICATION
 CEM-2404(F) (REV 7/2012)

CONTRACT NO.			MONTH				YEAR	
TRUCKING COMPANY OR OWNER OPERATOR	DBE Cert. No. (if certified)	Company Name and Address Telephone Number	Truck No.	CA No.	Amount paid to DBE and DBE Truckers	Amount Paid to DBE and DBE for lease arrangement with non-DBE and DBE	Date Paid	Transportation Arrangement (√ all that apply)
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
					\$	\$		<input type="checkbox"/> Lease <input type="checkbox"/> Non-DBE <input type="checkbox"/> DBE <input type="checkbox"/> DBE
TOTAL AMOUNT PAID					\$ 0.00	\$ 0.00		
PRIME CONTRACTOR			BUSINESS ADDRESS				BUSINESS PHONE NUMBER	
*Upon request all lease agreements must be made available, in accordance with the special provisions.								
I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT								
CONTRACTOR REPRESENTATIVE'S SIGNATURE			TITLE				DATE	

FOR DBE

COPY DISTRIBUTION: ORIGINAL – RESIDENT ENGINEER COPY – Civil Rights

For individual with sensory disabilities, this document is available in alternate formats. For information call (916) 654-3880 or

ADA Notice write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

INSTRUCTIONS

Contracts advertised on or before June 15, 2012 may contain DBE contract goals. DBE trucking participation must be reported on contracts with DBE goals only. All other trucking participation must be reported as DBE or non-DBE.

In the "Amount paid to DBE and DBE Truckers" column, the contractor must show the dollar amount paid to:

1. DBE and DBE trucking companies using trucks it owns, insures and operates. Include 100 percent of the amount paid to DBE and DBE for trucking services provided.
2. DBE and DBE trucking companies who lease from other DBE and DBE trucking companies or owner operators. Include 100 percent of the amount paid to DBE and DBE for trucking services provided.
3. To ensure proper crediting of participation on contracts advertised on or before June 15, 2012, identify the firm as a DBE or DBE in the "Transportation Arrangement" column.
4. In the "Amount paid to DBE/DBE for lease arrangement with non-DBE/DBE" column, the contractor must show the dollar amount paid to the DBE and DBE who leases trucks from non-DBE firms. Include only the amount for the fee or commission received as a result of the lease arrangement.
5. In the "Transportation Arrangement" column check all that apply for each firm listed. Use the DBE check box for all DBE trucking participation on contracts advertised after June 15, 2012.
6. The prime contractor or its representative must sign, including the individual's title and the date, certifying that the information provided on the form is complete and accurate.

The form must be submitted to the Department of Transportation before the 15 of each month

INSTRUCTIONS - LOCAL AGENCY BIDDER
DBE COMMITMENT (CONSTRUCTION CONTRACTS)

ALL BIDDERS:

PLEASE NOTE: This information may be submitted with your bid. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions. Failure to submit the required DBE commitment will be grounds for finding the bid nonresponsive

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract DBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. Prime contractors shall indicate all work to be performed by DBEs including, if the prime is a DBE, work performed by its own forces, if a DBE. The DBE shall provide a certification number to the Contractor and expiration date. Enter the DBE prime's and subcontractors' certification numbers. The form has a column for the Names of DBE contractors to perform the work (who must be certified on the date bids are opened and include the DBE address and phone number).

IMPORTANT: Identify all DBE firms participating in the project regardless of tier. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the DBE participation dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts), to determine how to count the participation of DBE firms.

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

Local agencies should complete the Local Agency Contract Award, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and filing.

INSTRUCTIONS

All First-tier subcontractors must be included on a subcontracting request.

Before subcontracting work starts, the contractor will submit an original CEM-1201 according to the Standard Specifications. After approval, the RE returns the original to the contractor and complete the remaining distribution as listed on the bottom of the form.

When an entire item is subcontracted, show the contractor's bid price.

When a portion of an item is subcontracted, describe the portion and show the percentage of the bid item and value.

In August 2008, the Standard Specifications were amended to eliminate specialty items. Enter Zeros or applicable amounts for specialty items should be entered in lines 2 and 3 of this form, depending on whether the contract includes the amendment.

THIS FORM IS NOT TO BE USED FOR SUBSTITUTIONS OF SUBCONTRACTORS AND DBE, DVBE OR SMALL BUSINESS ENTITIES

EXHIBIT 15-H DBE INFORMATION — GOOD FAITH EFFORTS

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date: _____

The City of San Diego established a Disadvantaged Business Enterprise (DBE) goal of XXX.X% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submission of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate Good Faith Effort was made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Date of Advertisement</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount(\$)	Percentage Of Contract
---------------	-------------------------------------	--------------------	------------	------------------------

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of Good Faith Effort (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)
CERTIFICATION STATUS CHANGE**

CEM-2403F (REV 7/2012)

The top of the form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, the Administering Agency (Caltrans), the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to substantiate and verify the actual DBE dollar amount paid to contractors on federally funded projects that had a change in certification status during the course of the completion of the contract. The two situations that are being addressed by CEM 2403F are if a firm certified as a DBE and doing construction work on the contract during the course of the project becomes decertified, and

if a non-DBE firm doing work on the contract during the course of the project becomes certified as a DBE.

The form has a column to enter the Contract Item No. (or Item No's), as well as a column for the Subcontractor name and Business Address, Business Phone and contractor's Certification Number.

The column entitled Amount Paid While Certified will be used to enter the actual dollar value of the work performed by those contractors who meet the conditions as outlined above during the time period they are certified as a DBE. This column on the CEM-2403(F) should only reflect the dollar value of work performed while the firm was certified as a DBE.

The column called Certification/Decertification Date (Letter attached) will reflect either the date of the Decertification Letter sent out by the Civil Rights or the date of the Certification Certificate mailed out by the Civil Rights. There is a box to check that support documentation is attached to the CEM-2403(F) form.

There is a comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the contractor and the resident engineer sign and date that the information provided is complete and correct.

FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL REPORT

1. MARK APPROPRIATE BOX <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	2. COMPANY NAME, CITY, STATE	3. PROJECT NUMBER:	4. DOLLAR AMOUNT OF CONTRACT	5. PROJECT LOCATION (County and State)
---	-------------------------------------	---------------------------	-------------------------------------	---

This collection of information is required by law and regulation 23 U.S.C. 140a and 23 CFR Part 230. The OMB control number for this collection is 2125-0019 expiring March, 2016

6. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20 (INSERT YEAR)

JOB CATEGORIES	TABLE A																		TABLE B			
	TOTAL EMPLOYED		TOTAL/RACIAL/ETHNIC MINORITY		BLACK OR AFRICAN AMERICAN		HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		TWO OR MORE RACES		WHITE		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS																						
SUPERVISORS																						
FOREMEN/WOMEN																						
CLERICAL																						
EQUIPMENT OPERATORS																						
MECHANICS																						
TRUCK DRIVERS																						
IRONWORKERS																						
CARPENTERS																						
CEMENT MASONS																						
ELECTRICIANS																						
PIPEFITTER/PLUMBERS																						
PAINTERS																						
LABORERS-SEMI SKILLED																						
LABORERS-UNSKILLED																						
TOTAL																						
	TABLE C (Table B data by racial status)																					
APPRENTICES																						
OJT TRAINEES																						
8. PREPARED BY: (Signature and Title of Contractors Representative)								9. DATE		10. REVIEWED BY (Signature and Title of State Highway Official)										11. DATE		

LOCAL AGENCY NOTIFICATION TO CONTRACTOR

INSTRUCTIONS FOR COMPLETING

FEDERAL HIGHWAY ADMINISTRATION (FHWA) PR-1391 FORM

The FHWA PR-1391 form shall be used to report the number of minority and non-minority employees by gender employed in each work classification on a Federal-aid contract. The "Job Categories" column is used to identify work classification. When identifying work classifications, use only the categories listed on the form. Miscellaneous job categories are to be incorporated in the most appropriate category listed on the form.

WHO MUST REPORT:

Each prime contractor and subcontractor regardless of tier who has a Federal-aid contract exceeding \$10,000 must report.

REPORT DATA:

Each contractor is to collect data of the number of project personnel who worked all or any part of the last full week of July. Contractors who do not perform any work during the last full week of July must write "Not Applicable" across the form, sign, date and return.

DUE DATE: _____

Due on or before the 12th of August to the Local Agency Resident Engineer. The Local Agency Resident Engineer must submit the report to the District Local Assistance Engineer by August 26th.

DEFINITION OF TERMS:

OFFICIALS (Managers): Officers, project engineers, superintendents, etc., who have management-level responsibility and authority.

SUPERVISORS: All levels for project supervision, if any, between management and foremen levels.

FOREMEN/WOMEN: Men and women in direct charge of crafts workers and laborers performing work on the project.

MECHANICS: Equipment service and maintenance personnel.

LABORERS, SEMI-SKILLED: All laborers classified by specialized type of work.

LABORERS, UNSKILLED: All non-classified laborers.

OTHERS: Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on the project should be accounted for.

BLOCK ENTRIES

- CHECK APPROPRIATE BLOCK – Check only one box.
 - COMPANY NAME, CITY, STATE – Enter the firm’s name, city or town, and state. Do not abbreviate.
- (3) PROJECT NUMBER – Enter all Federal-aid project number(s) associated with the contract number. (If you are a subcontractor and do not know the Federal-aid project number, contact the prime contractor).
- (4) DOLLAR AMOUNT OF CONTRACT – Enter dollar amount of contract, including amended amounts.
- I. PROJECT LOCATION – Enter all county(ies) and state(s) associated with the contract number. (If you are a subcontractor and do not know the county(ies) and state(s), contact the prime contractor).
- II. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20__ (INSERT YEAR) – Enter the last two digits of the calendar year you are reporting data for.
- TABLE A** – Enter number of employee(s) based on race, gender and job category during the reporting period.
- TABLE B** – Enter number of apprentice(s) and on-the-job trainee(s) based on gender and job category during the reporting period.
- TABLE C** – enter number of apprentice(s) and on-the-job trainee(s) based on race and gender during the reporting period.
1. PREPARED BY – Signature and Title of Contractor’s Representative certifying the reported data to be true.
 2. DATE – Enter the date the Contractor’s Representative signed this form.
 3. REVIEWED BY – Signature and Title of Local Agency Official reviewing data.
 4. DATE – Enter the date the Local Agency Official signed this form.

FUNDING AGENCY PROVISIONS

APPENDIX

FOR REFERENCE ONLY

DBE POLICY STATEMENT FOR FAA CONTRACTS

The City of San Diego (Sponsor) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the requirements of the U.S. Department of Transportation (DOT). As a recipient of funding from the DOT, the City of San Diego signed an assurance to comply with the provisions of 49 CFR Part 26, "Participation by Disadvantaged Business Enterprise in DOT Programs."

It is the policy of the Airports Division that DBE's, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts assisted in whole or in part by funds granted by the DOT.

The Airports Division prohibits discrimination against any person because of race, color, sex, or national origin, in the award or performance of any contract subject to the requirements of 49 CFR Part 26.

The Airports Division will require its employees, agents, and contractors to adhere to the provisions of this program.

This policy statement is disseminated to appropriate departments of the City of San Diego, to organizations of minority and disadvantaged businesses and to non-minority business and community organizations of the City of San Diego.

Deputy Director, Airports Division

Date: _____

FOR REFERENCE ONLY

Insurance Company Agent for Service of Process in California:

_____ Name	_____ Agency
_____ Street Number	_____ Street Number
_____ City and State	_____ City and State
_____ Telephone No.	_____ Telephone No.

This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirements, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies.

NOTICE:

No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the exact above form shall be provided for each insurance company.

Insurers must be authorized to do business and have an agent for service of process in California and have an "A-" policyholder's rating and financial rating of at least Class VII in accordance with the most current Best's Rating.

FOR REFERENCE ONLY

INSURANCE ENDORSEMENT

Description of Contract: City of San Diego - CONSTRUCTION OF _____

Type of Insurance: Workers' Compensation Insurance

This endorsement forms a part of Policy No. _____.

ENDORSEMENT: It is agreed that with respect to such insurance as is afforded by the policy, the Company waives any right of subrogation it may acquire against the City, the Consulting Engineer, and their consultants, and each of their directors, officers, agents, and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above referenced contract.

This endorsement does not increase the Company's total limits of liability.

Name Insured (Contractor)	Insurance Company
_____ Street Number _____	_____ Street Number _____
_____ City and State _____	_____ City and State _____
_____	By _____ (Company Representative)
State of _____)	_____
County of _____)	_____

On this ____ day of _____, 20__, before me personally came _____ to be known, who being duly sworn, did depose and say: that _____ is an authorized representative of the _____ and acknowledged to me that _____ executed the within instrument on behalf of said insurance company.

IN WITNESS WHEREOF, I have signed and affixed my official seal on the date in this certificate first above written.

Notary Public

NOTICE: No substitution or revision to the above endorsement form will be accepted. If the insurance called for is provided by more than one policy, a separate endorsement in the exact above form shall be provided for each policy.

CERTIFICATE OF INSURANCE

Description of Contract: City of San Diego - CONSTRUCTION OF _____

Type of Insurance: Liability Insurance

THIS IS TO CERTIFY that the following policies have been issued to the below stated company in conformance with the requirements of Section 7-1.12 of the Standard Specifications and are in force at this time:

POLICY EXPIRATION		Limits of Liability	
		<u>In Thousands (000)</u>	
<u>NUMBER</u>	<u>DATE</u>	<u>Each Occurrence</u>	<u>Aggregate</u>
A. GENERAL LIABILITY			
		Bodily Injury	\$ _____
		Property Damage	\$ _____
		Bodily Injury and Property Damage Combined	\$ _____
		Personal Injury	\$ _____
<hr/>			
B. AUTOMOBILE LIABILITY			
		Bodily Injury (Each Person)	\$ _____
		Bodily Injury (Each Occurrence)	\$ _____
		Bodily Injury and Property Damage Combined	\$ _____
<hr/>			
C. EXCESS LIABILITY			
		Bodily Injury and Property Damage Combined	\$ _____
<hr/>			

FOR REFERENCE ONLY

The following types of coverage are included in said policies (indicated by "X" in space):

A GENERAL LIABILITY:

Comprehensive Form.....	YES _____	NO _____
Premises-Operations	YES _____	NO _____
Explosion and Collapse Hazard	YES _____	NO _____
Underground Hazard	YES _____	NO _____
Products/Completed Operations Hazard.....	YES _____	NO _____
Contractual Insurance.....	YES _____	NO _____
Broad Form Property Damage Including Completed Operations	YES _____	NO _____
Independent Contractors	YES _____	NO _____
Personal Injury	YES _____	NO _____

B. AUTOMOBILE LIABILITY

Comprehensive Form Including Loading and Unloading.....	YES _____	NO _____
Owned	YES _____	NO _____
Hired	YES _____	NO _____
Non-Owned	YES _____	NO _____

C. EXCESS LIABILITY

Umbrella Form.....	YES _____	NO _____
Other than Umbrella Form.....	YES _____	NO _____

This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

Certificate of Insurance
(Liability) - 2 of 3

The company will give at least thirty (30) days' written notice by certified mail to the City and the Consulting Engineer prior to any material change or cancellation of said policies.

_____ Name Insured (Contractor)	_____ Insurance Company
_____ Street Number	_____ Street Number
_____ City and State	_____ City and State

By _____
(Company Representative)

State of _____)

County of _____)

On this _____ day of _____, 200 , before me personally came _____ to be known who being duly sworn, did depose and say: that _____ is an authorized representative of the _____ and acknowledged to me that _____ executed the within instrumental on behalf of said insurance company.

IN WITNESS WHEREOF, I have signed and affixed my official seal on the date in this certificate first above written.

NOTARY PUBLIC

Insurance Company Agent for Service
Of Process in California:

_____ Name	_____ Agency
_____ Street Number	_____ Street Number
_____ City and State	_____ City and State
_____ Telephone No.	_____ Telephone No.

NOTICE: No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the above form shall be provided for each insurance company.

Insurers must be authorized to do business and have an agent for service of process in California and have an "A-" policyholders' rating and a financial rating of at least Class VII in accordance with the most current Best's Rating.

Certificate of Insurance
(Liability) - 3 of 3

INSURANCE ENDORSEMENT

Description of Contract: City of San Diego - CONSTRUCTION OF _____

Type of Insurance: Liability Insurance

This endorsement forms a part of Policy No. _____.

ENDORSEMENT: The City, it's officers and employees are included as additional insureds under said policies but only while acting in their capacity as such and only as respects operations of the named insured, his Contractors, and Subcontractor, any supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the above-referenced contract. This insurance shall not apply if the loss or damage is ultimately determined to be the result of the sole and exclusive negligence (including any connected with the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications) of one or more of the aforesaid additional insureds. The insurance afforded to these additional insureds is primary insurance. If the additional insureds have other insurance which might be applicable to any loss, the amount of this insurance shall not be reduced or pro-rated by the existence of such other insurance.

The Contractual Liability Insurance afforded is sufficiently broad to insure all of the matters set forth in the section entitled, "Indemnity", in the Special Provisions of the above-referenced contract except those matters set forth in the fourth paragraph thereof.

This endorsement does not increase the Company's total limits of liability.

Name Insured (Contractor)

Insurance Company

Street Number

Street Number

City and State

City and State

By _____

(Company Representative)

State of _____)

_____)

County of _____)

SEE NOTICE ON PAGE 2 of 2

On this ____ day of _____, 200 , before me personally came _____ to be known who being duly sworn, did depose and say: That _____ is an authorized representative of the _____ and acknowledged to me that _____ executed the within instrument on behalf of said insurance company.

Insurance Endorsement
(Liability) - Page 1 of 2

IN WITNESS WHEREOF, I have signed and affixed my official seal on the date in this certificate first above written.

NOTARY PUBLIC

NOTICE: No substitution or revision to the above endorsement form will be accepted. If the insurance called for is provided by more than one policy, a separate endorsement in the exact above form shall be provided for each policy.

Insurers must be authorized to do business and have an agent for service of process in California and have an "A-" policyholder's rating and a financial rating of at least Class VII in accordance with the most current Best's Rating.

FOR REFERENCE ONLY

**Insurance Endorsement
(Liability) - Page 2 of 2**

CERTIFICATE OF COMPLIANCE

Materials and Workmanship Compliance

For Contract or Task _____

I certify that the material listed below complies with the materials and workmanship requirements of the Caltrans Contract Plans, Special Provisions, Standard Specifications, and Standard Plans for the contract listed above.

I also certify that I am an official representative for _____, the manufacturer of the material listed above. Furthermore, I certify that where California test methods, physical or chemical test requirements are part of the specifications, that the manufacturer has performed the necessary quality control to substantiate this certification.

Material Description:

Manufacturer: _____
Model: _____
Serial Number (if applicable) _____
Quantity to be supplied: _____
Remarks: _____

Signed by: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____

City of San Diego

NOTICE OF MATERIALS TO BE USED

To: _____ Date: _____, 20____

Resident Engineer

You are hereby notified that the materials required for use under Contract No. _____
for construction of _____

_____ in the City of San Diego, will be obtained from sources herein designated.

CONTRACT ITEM NO. (Bid Item)	KIND OF MATERIAL (Category)	NAME AND ADDRESS WHERE MATERIAL CAN BE INSPECTED (At Source)

It is requested that you arrange for a sampling, testing, and inspection of the materials prior to delivery, in accordance with Section 4-1.11 of the WHITEBOOK, where it is practicable, and in accordance with your policy. It is understood that source inspection does not relieve the Contractor of full responsibility for incorporating in the work, materials that comply in all respects with the contract plans and specifications, nor does it preclude subsequent rejection of materials found to be undesirable or unsuitable.

Distribution:

Supplier

Yours truly,

Signature of Supplier

Address

Phone Number: _____

CALTRANS STANDARD SPECIFICATIONS

FOR REFERENCE ONLY

DIVISION I GENERAL PROVISIONS

2 BIDDING

2-1.01 GENERAL

Section 2 includes specifications related to bid eligibility and the bidding process.

The bidder's attention is directed to the provisions in Section 2, "Bidding," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of and the submission of the bid.

The bidder's bond shall conform to the bond form in the Contract Documents for the project and shall be properly filled out and executed. The bidder's bond form included in that Contract Documents may be used.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Contract Documents. Signing the Contract Documents shall also constitute signature of the Noncollusion Affidavit.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

2-1.015 FEDERAL LOBBYING RESTRICTIONS. Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower-tier sub-recipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal-aid contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than Federal funds have been paid for the same purposes in connection with this Federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included in the Bid book. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Bid book. Signing the Bid book shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
- (3) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal Action.

2-1.12 DISADVANTAGED BUSINESS ENTERPRISES

2-1.12A General

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the Contract (49 CFR 26).

2-1.12B Disadvantaged Business Enterprises

2-1.12B(1) General

To ensure equal participation of DBEs groups provided in 49 CFR 26.5, the City's shows a goal for DBEs.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown on the Notice Inviting Bids or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify that at the bid opening date the DBE firm is certified as DBE by the CA Unified Certification Program.

All DBE participation will count towards the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts toward the goal in the following manner:

1. 100 percent if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor

regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit toward the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1)-(4), (6).

2-1.12B(2) DBE Commitment Submittal

Submit DBE information on the Local Agency - DBE - Commitment form (DBE commitment form) included in the Contract Documents.

If the DBE commitment form is not submitted with the bid, all bidders must complete and submit the form to the City. The DBE commitment form must be received by the City no later than 4:00 p.m. on the 4th business day after bid opening.

Submit written confirmation from each DBE shown on the form stating that it will be participating in the Contract. Include confirmation with the DBE commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE will be participating in the Contract.

If you do not submit the DBE commitment form by the specified time, your bid is **non-responsive**.

2-1.12B(3) Good Faith Efforts Submittal

If you have not met the DBE goal, complete and submit the Good Faith Efforts Documentation form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by DBEs are considered. If good faith efforts documentation is not submitted with the bid, it must be received by the City no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE commitment form shows that you have met the DBE goal or if you are required to submit the DBE commitment form, you must submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the City finds that the DBE goal has not been met. Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total bid. You are responsible to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty whether the DBEs were interested and include the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide enough time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and its price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.

4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.

7.

List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date assistance was offered. Provide copies of supporting documents, as appropriate.

8. Any additional data to support demonstration of good faith efforts.

The City may consider DBE commitments of the 2nd and 3rd bidders in determining whether the low bidder made good faith efforts to meet the DBE goal.

3 CONTRACT AWARD AND EXECUTION

3-1.01 GENERAL

Section 3 includes specifications related to contract award and execution.

The bidder's attention is directed to the provisions in Section 3, "Contract Award and Execution," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

Bid protests are to be delivered to the following address:

THE CITY OF SAN DIEGO
PURCHASING & CONTRACTING DEPARTMENT, PUBLIC WORKS DIVISION
SAN DIEGO, CA 92101

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned together with the contract bonds, to the Agency so that it is received within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address:

3-1.02 DATA UNIVERSAL NUMBERING SYSTEM (D-U-N-S) NUMBER

For the purpose of complying with the American Recovery and Reinvestment Act of 2009, the successful bidder must provide the Department a D-U-N-S number.

Complete and sign the Data Universal Numbering System (D-U-N-S) Number form included in the contract documents. This form must be submitted with the executed contract.

If your company does not have a D-U-N-S number, you can obtain one by contacting Dun & Bradstreet at: <http://dnb.com/us/>

If you fail to submit this information with the executed contract, the City will not approve the contract.

3-1.06 CONTRACTOR LICENSE

For a federal-aid contract, the Contractor must be properly license as a contractor from contract award through Contract acceptance (Pub Cont Code § 10164).

For a non-federal-aid contract:

1. The Contractor must be properly licensed as a contractor from bid opening through Contract acceptance (Bus & Prof Code § 7028.15)
2. Joint venture bidders must obtain a joint venture license before contract award (Bus & Prof Code § 7029.1)

3-1.12 CALTRANS BIDDER - DBE INFORMATION FORM

Complete and sign the Local Agency - DBE Information form included in the contract documents regardless of whether no DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the City encourages you to submit a copy of the joint venture agreement.

3-1.13 FORM FHWA-1273

For a federal-aid contract, form FHWA-1273 is included with the Contract form in the documents sent to the successful bidder for execution. Comply with its provisions. Interpret the training and promotion section as specified in section 7-1.11A.

5 CONTROL OF WORK

5-1.01 GENERAL

Section 5 includes specifications regarding the Contract parties' relations and Contract acceptance.

5-1.04A PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement 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, deficient subcontract performance, or noncompliance by a subcontractor.

5-1.04B PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 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 prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

5-1.04C SUBCONTRACTING

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City of San Diego may exercise the remedies provided under Pub Cont Code § 4110.

The City of San Diego may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department

of Industrial Relations web site at: <http://www.dir.ca.gov/dlse/debar.html>

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower-tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 7 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due or to become due, until correction is made. Failure to comply may result in termination of the contract.

5-1.05 PAYMENTS. -- Attention is directed to Section 9-1.16, "PROGRESS PAYMENTS," and 9-1.17, "PAYMENT AFTER CONTRACT ACCEPTANCE," of the Standard Specifications and these special provisions.

For the purpose of making progress payments pursuant to Section 9-1.16, "PROGRESS PAYMENTS," of the Standard Specifications, the amount set forth for the contract items of work hereinafter listed shall be deemed to be the maximum value of the contract item of work, which will be recognized for progress payment purposes.

Clearing and Grubbing	<u>\$40,000.00</u>
Develop Water Supply	<u>\$80,000.00</u>

After acceptance of the contract pursuant to the provisions in Section 5-1.46, "FINAL INSPECTION AND CONTRACT ACCEPTANCE," of the Standard Specifications, the amount, if any, payable for a contract item of work in excess of the maximum value for progress payment purposes hereinabove listed for the item, will be included for payment in the first estimate made after acceptance of the contract.

No partial payment will be made for any materials on hand which are furnished but not incorporated in the work.

5-1.15 STATISTICAL TESTING - Requirements for statistical testing will not apply to the Work.

5-1.13B Disadvantaged Business Enterprises

5-1.13B(1) General

Use each DBE subcontractor as listed on the Subcontractor List form and the Local Agency - DBE Information form unless you receive authorization for a substitution.

Notify the Engineer of any changes to your anticipated DBE participation. Submit this notification before starting the affected work.

Maintain records including:

1. Name and business address of each 1st-tier subcontractor
2. Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier

3. Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th day of each month, submit a Monthly DBE Trucking Verification form.

If a DBE subcontractor is decertified before completing subcontracted work, the subcontractor must notify you in writing of the decertification date. If a subcontractor becomes a certified DBE before completing subcontracted work, the subcontractor must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change form. Submit the form within 90 days of Contract acceptance.

Upon work completion, complete a Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors form. Submit it within 90 days of Contract acceptance. The City withholds \$10,000 until the form is submitted. The City releases the withhold upon submission of the completed form.

5-1.13B(2) Performance of Disadvantaged Business Enterprises

DBEs must perform work or supply materials as listed in the Local Agency - DBE - Commitment form.

Do not terminate or substitute a listed DBE listed for convenience and perform the work with your own forces or obtain materials from other sources without written authorization from the City.

The City authorizes a request to use other forces or sources of materials if it shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on the plans and specifications for the project.
2. You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractors license and the listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the Contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.

11. City determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Department of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. 1 or more of the reasons listed in the preceding paragraph
2. Notices from you to the DBE regarding the request
3. Notices from the DBE to you regarding the request

If a listed DBE is terminated or substituted, you must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the Contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

Unless the City authorizes (1) a request to use other forces or sources of materials or (2) a good faith effort for a substitution of a terminated DBE, the City does not pay for work listed on the Local Agency - DBE - Commitment form unless it is performed or supplied by the listed DBE or an authorized substitute.

6 CONTROL OF MATERIALS

6-1 GENERAL

6-1.01 GENERAL

Section 6 includes specifications related to control of materials.

6-2 MATERIAL SOURCE

6-2.01 GENERAL

Material incorporated into the work must be new.

6-2.02 MATERIAL SOURCE

Before the preconstruction conference, submit material source information on a Notice of Materials to Be Used form.

6-2.05 BUY AMERICA

6-2.05A General

Reserved

6-2.05C Steel and Iron Materials (23 CFR 635.410)

Section 6-2.05C applies to a federal-aid contract.

Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)]
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials

7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

7-1.01 GENERAL

Section 7 includes specifications regarding your:

1. Compliance with laws
2. Responsibilities for public safety and convenience
3. Responsibilities for indemnification, insurance, and liability

7-1.02 LAWS

7-1.02A General

Comply with laws, regulations, orders, and decrees applicable to the project. Indemnify and defend the State against any claim or liability arising from the violation of a law, regulation, order, or decree by you or your employees. Immediately report to the Engineer a discrepancy or inconsistency between the Contract and a law, regulation, order, or decree.

If the City incurs any fines or penalties because of your failure to comply with a law, regulation, order, or decree, the City deducts the amount of the fine or penalty.

Immediately notify the Engineer if a regulatory agency requests access to the job site or to records. Submit a list of documents provided to the agency and issued enforcement actions.

7-1.02B U.S. Fair Labor Standards Act

Comply with 29 USC § 201 et seq.

7-1.02D-7-1.02H Reserved

7-1.02I Government Code

7-1.02I(1) General

Reserved

7-1.02I(2) Nondiscrimination

Under 2 CA Code Regs §§ 8107 and 8203:

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair

Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE, SECTION 12990)

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000, or more.

1. As used in the specifications:
 - a. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;
 - b. "Minority" includes:
 - (i) Black (all persons having primary origins in any of the black racial groups of Africa, but not of Hispanic origin);
 - (ii) Hispanic (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish derived culture or origin regardless of race);
 - (iii) Asian / Pacific Islander (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and
 - (iv) American Indian / Alaskan Native (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).
2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
3. The contractor shall implement the specific nondiscrimination standards provided in paragraph 6(a) through (e) of these specifications.
4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.

5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.
6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under Steps a. through e. below:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - c. Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
 - e. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.
7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes

every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.

8. The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.
9. Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104 (b) of this Chapter shall create a rebuttal presumption that a contractor is in compliance with the requirements of Section 12990 of the Government Code and its implementing regulations.
10. The Contractor shall not use the nondiscrimination standards to discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical handicap, medical condition, marital status or age over 40.
11. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.
13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

7-1.02K(4) Apprentices

Comply with the apprentice to journeyman ratio requirements (Labor Code § 1777.5(g)).

Comply with the training contribution requirements (Labor Code § 1777.5(m)(1)).

For answers to questions, contact the Division of Apprenticeship Standards before starting work.

7-1.11 FEDERAL LAWS FOR FEDERAL-AID CONTRACTS

7-1.11A General

A copy of form FHWA-1273 is included in section 7-1.11B. The training and promotion section of section II refers to training provisions as if they were included in the special provisions. The Department specifies the provisions in section 7-1.11D of the Standard Specifications. If a number of trainees or apprentices is required, the Department shows the number on the Notice to Bidders. Interpret each FHWA-1273 clause shown in the following table as

FOR REFERENCE ONLY

having the same meaning as the corresponding Department clause:

FHWA-1273 Nondiscrimination Clauses

FHWA-1273 section	FHWA-1273 clause	Department clause
Training and Promotion	In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.	If section 7-1.11D applies, section 7-1.11D supersedes this subparagraph.
Records and Reports	If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.	If the Contract requires on-the-job training, collect and report training data.

7-1.11B FHWA-1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

ADD PDF FILE

FOR REFERENCE ONLY

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

ADD PDF FILE

FOR REFERENCE ONLY

7-1.11C Female and Minority Goals

To comply with section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the Department is including in section 7-1.11C female and minority utilization goals for federal-aid construction contracts and subcontracts that exceed \$10,000.

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as shown in the following table:

Minority Utilization Goals

Economic area		Goal (Percent)
174	Redding CA: Non-SMSA Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6

Economic area		Goal (Percent)
176	San Francisco-Oakland-San Jose, CA:	
	SMSA Counties:	
	7120 Salinas-Seaside-Monterey, CA	28.9
	CA Monterey	
	7360 San Francisco-Oakland	25.6
	CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	
	7400 San Jose, CA	19.6
	CA Santa Clara, CA	
	7485 Santa Cruz, CA	14.9
	CA Santa Cruz	
	7500 Santa Rosa	9.1
	CA Sonoma	
	8720 Vallejo-Fairfield-Napa, CA	17.1
	CA Napa; CA Solano	
	Non-SMSA Counties:	23.2
	CA Lake; CA Mendocino; CA San Benito	

Economic area		Goal (Percent)
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	12.3 24.3 19.8

Economic area		Goal (Percent)
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	19.1 26.1 23.6

FOR REFERENCE ONLY

Economic area		Goal (Percent)
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles 6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	 11.9 28.3 21.5 19.0 19.7 24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	 16.9 18.2

For each July during which work is performed under the Contract, you and each non-material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix

C to 23 CFR 230). Submit the forms by August 15.

7-1.11D Training

For the Federal training program, the number of trainees or apprentices is 2.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a Contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the Department's approval for this submitted information before you start work. The Department credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of section 7-1.11D is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman

status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The Department and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - 1.1. Meet your equal employment opportunity responsibilities.
 - 1.2. Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period.
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training and it is administered in a way consistent with the equal employment responsibilities of federal-aid highway construction contracts.

Obtain Department approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the FHWA division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The Department reimburses you 80 cents per hour of training given an employee on this Contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed under a federal-aid contract and you do at least one of the following:
 - 2.1. Contribute to the cost of the training
 - 2.2. Provide the instruction to the apprentice or trainee
 - 2.3. Pay the apprentice's or trainee's wages during the off-site training period
3. If you comply with section 7-1.11D

Each apprentice or trainee must:

1. Start training on the project as soon as feasible after the start of work involving the apprentice's or trainee's craft
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's

work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting your performance under section 7-1.11D.

FOR REFERENCE ONLY

8 PROSECUTION AND PROGRESS

8-1.01 GENERAL

Section 8 includes specifications related to prosecuting the Contract and work progress.

8-1.10 DC-CEM-1201 DAMAGES

8-1.10A General

The Department specifies liquidated damages (Pub Cont Code § 10226). Liquidated damages, if any, accrue starting on the 1st day after the expiration of the working days through the day of Contract acceptance except as specified in sections 8-1.08B and 8-1.08C.

The Department withholds liquidated damages before the accrual date if the anticipated liquidated damages may exceed the value of the remaining work.

Liquidated damages for all work except plant establishment are as shown in the following table:

Liquidated Damages

Total bid		Liquidated damages
From over	To	per day
\$0	\$50,000	\$1,200
\$50,000	\$120,000	\$1,500
\$120,000	\$1,000,000	\$1,900
\$1,000,000	\$5,000,000	\$3,000
\$5,000,000	\$10,000,000	\$5,400
\$10,000,000	\$30,000,000	\$8,300
\$30,000,000	\$100,000,000	\$10,500
\$100,000,000	\$250,000,000	\$28,500

If all work except plant establishment is complete and the total number of working days have expired, liquidated damages are \$950 per day.

FOR REFERENCE ONLY

CALTRANS STANDARD SPECIFICATIONS (13-95)

CALTRANS STANDARD SPECIFICATIONS - MATERIALS

CALTRANS STANDARD SPECIFICATIONS - DESCRIPTION OF BRIDGE WORK

CALTRANS STANDARD SPECIFICATIONS - CONSTRUCTION DETAILS

CALTRANS STANDARD SPECIFICATIONS - BUILDINGS

CALTRANS STANDARD SPECIFICATIONS - RAILROAD RE

FOR REFERENCE ONLY