DATE: June 4, 2019

TO: Mayor and Council Members

FROM: Residential Sound Insulation Department

SUBJECT: Agreement with HHJ Construction, Inc., for Residential Sound Insulation/Phase XV, Group 23

RECOMMENDATION:
It is recommended that the Mayor and Council Members take the following actions:

1. Award a contract and approve an agreement with the lowest, responsible bidder, HHJ Construction, Inc., to provide residential sound insulation work on 18 residential units (RSI Phase XV, Group 23) in the amount of $565,771.49 (with an additional 10% contingency fund in the amount of $56,577.15) per Bid No. CB-19-02;
2. Approve special expenses in the amount of $15,354 (FAA/LAWA funds); and

BACKGROUND:
The City receives grant awards from the Federal Aviation Administration (FAA) and Los Angeles World Airports (LAWA) to insulate residential housing units to abate aircraft noise. In order to perform the residential sound insulation projects (Projects) efficiently, the City groups the units by type and application date. The project group detailed in this report is for 18 residential units (Project Phase XV, Group 23).

The plans and specifications were advertised on February 28, 2019, and on March 27, 2019, the City Clerk received and opened three (3) bids for Bid No. CB-19-02. The following bids were submitted:

1. HHJ Construction, Inc., Los Angeles, CA........................................ $565,771.49
2. S & L Specialty Construction Inc., Syracuse, NY.............................. $584,225.00
3. So Cal Construction, Inc., Inglewood, CA...................................... $898,650.00

In accordance with Section 2-20 of the Inglewood Municipal Code, “the expression ‘lowest, responsible bidder’ as used in the City’s bidding documents shall be deemed to mean the lowest responsible bidder whose offer best responds in quality, fitness, and capacity to the requirements of the proposed work or usage.”

Staff has reviewed the bid proposals and determined that HHJ Construction, Inc., was qualified as the lowest responsible bidder, and has successfully completed previous projects for City of Inglewood’s Residential Sound Insulation Program.

DISCUSSION:
The scope of work for this project consists of replacement of existing windows and exterior doors with acoustic grade products, and new air conditioning units. The locations of the residential units in this group are illustrated in the attached ‘location’ maps. The average – lowest bid per unit construction cost is
$31,431.75. Bids from other project groups may differ due to varying project group characteristics including quantities of window and doors, and the type of construction or dwelling type (multi-family or single-family). HHJ Construction Inc., must complete the contractual work by September 12, 2019.

Table 1 provides selected information of this particular bid group, including residential unit type, number and percentage of residential units in affected Council Districts, and the total number of residential units to be insulated in this bid group.

<table>
<thead>
<tr>
<th>Phase 15.23</th>
<th>Single</th>
<th>Multi</th>
<th>Total # of Units</th>
<th>% Per</th>
</tr>
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<tbody>
<tr>
<td>District</td>
<td>Family</td>
<td>Duplex</td>
<td>Family</td>
<td></td>
</tr>
<tr>
<td>1</td>
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<td><strong>Total</strong></td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>100%</td>
</tr>
<tr>
<td>% / Unit Type</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

FINANCIAL/FUNDING ISSUES AND SOURCES:
Upon adoption of this attached resolution, funds will be available in the Fiscal Year 2018-2019 budget under account code no. 222-100-R123-44830 (Noise Mitigation Fund/Capital Improvement Project/RSI Phase 15, Group 23/Contract Services).

The General Fund will not be impacted as the funding for this contract will be utilized from the following sources: 80 percent FAA funds and 20 percent local matching dollars from LAWA funds using Grant Implementation Plan (GIP) 15 for 18 residential units.

LEGAL REVIEW VERIFICATION:
Administrative staff has verified that the legal documents accompanying this report have been submitted to, reviewed and approved by the Office of the City Attorney.

FINANCE REVIEW VERIFICATION:
Administrative staff has verified that this report, in its entirety, has been submitted to, reviewed and approved by the Finance Department.

DESCRIPTION OF ATTACHMENTS:
Attachment No. 1 - Agreement
Attachment No. 2 - Resolution
Attachment No. 3 - Bidders Proposal
Attachment No. 4 - Vicinity Map; Location Map
Attachment No. 5 - Addendum #1
APPROVAL VERIFICATION SHEET

PREPARED BY:
Bettye R. Griffith, Residential Sound Insulation Director and
Conchita Cox, Staff Assistant

COUNCIL PRESENTER:
Bettye R. Griffith, Residential Sound Insulation Director

DEPARTMENT HEAD APPROVAL:

Bettye R. Griffith, Residential Sound Insulation Director

ASSISTANT CITY MANAGER APPROVAL:

Louis A. Atwell, Assistant City Manager

CITY MANAGER APPROVAL:

Artie Fields, City Manager
ATTACHMENT NO. 1
RSI AGREEMENT

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DIVISION 1 - GENERAL CONDITIONS

PARTIES

THIS AGREEMENT is made and entered into this 7th day of May, 2019 by and between the CITY OF INGLEWOOD ("City") and HHJ Construction Inc. ("Contractor"), with its principal place of business located at 11156 S. Main Street, Los Angeles, CA 90061.

RECITALS

WHEREAS, the City desires to modify certain elements of specified occupied dwellings to achieve interior protection against noise, to wit, residential sound insulation; and

WHEREAS, Contractor holds itself out as capable and competent to perform the required residential sound insulation services requested by the City.

NOW THEREFORE, in consideration of the promises contained herein, it is mutually agreed by the parties hereto as follows:
Article 1 – ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

In the event of a conflict between laws or the Contract Documents the order of precedence shall be as follows:

FIRST: Requirements of law, including the Charter and Ordinances the City.

SECOND: Requirements from other agencies as may be required by law or ordinance.

THIRD: Permits from City Departments as may be required by law or ordinance.

FOURTH: This Agreement.

FIFTH: Any Addenda to the Bid Documents – with the Order of Precedent from among more than one Addenda being in descending order from the most recent to the oldest Addenda.

SIXTH: Contract Specifications.

SEVENTH: Contractor’s Bid Proposal and Statement.

EIGHTH: Invitation to Submit Bids.

NINTH: CD-Rom

TENTH: Special Provisions

ELEVENTH: Special Specifications

TWELFTH: The Plans


Change orders, supplemental agreements, and approved revisions to the plans and specifications will take precedence over documents listed above, except those listed as FIRST, SECOND and THIRD. Detailed plans shall have precedence over general plans.
Article 2 – DEFINITIONS

Whenever in the contract documents the following terms are used, they shall be understood to mean and refer to the following:

ACCESS ROAD means the right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public highway.

ADVERTISEMENT means a public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.

AGENCY means the City of Inglewood.

AIRPORT IMPROVEMENT PROGRAM (AIP) means a grant-in-aid program, administered by the Federal Aviation Administration (FAA).

AIRPORT means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft; an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; and airport buildings and facilities located in any of these areas, and includes a heliport.

ALLOWABLE COSTS means those costs, listed in Article 22 of this Contract for Work not covered by agreed unit prices, which are to be used in calculating adjustments to the Contract Sum and that do not include any costs listed as not allowed in Article 22 of this Contract.

ALLOWABLE MARKUPS means the percentage of markups specified in Article 22 of this Contract for Work not covered by agree unit prices, which are to be used in calculating adjustments to the Contract Sum.

APPLICABLE LAWS means all applicable federal, state and municipal laws (legal and equitable), statutes, building codes, ordinances, regulations and lawful orders (including, without limitation, the City acting in its regulatory capacity) having jurisdiction over the Project, Work, Site, City, or Contractor (including, without limitation, Environmental Laws) and all ordinances, rules and regulations enacted by City. In the event of a conflict between or among Applicable Laws governing Contractor’s performance of the Work, the more stringent shall apply.
APPLICATION FOR PAYMENT means Contractor's certified application for payment for Work in accordance with Contract Documents.

ARCHITECT means the individual or firm under contract with City primarily responsible to provide design, engineering and related construction administration for the Project.

ASTM INTERNATIONAL (ASTM) means formerly known as the American Society for Testing and Materials (ASTM).

AWARD means the Owner's notice to the successful bidder of the acceptance of the submitted bid.

BIDDER means any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.

BUILDING AREA means an area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.

BIDDING DOCUMENTS means the following collection of documents prepared and issued for the purpose of soliciting Bids for the Work: (1) Invitation to Submit Bids, (2) Instructions to Bidders, (3) Bid Forms, (4) Sample Construction Contract including General Conditions, General Requirements, Selected Statutory Provisions of the State of California, and Miscellaneous Provisions, (5) Technical Specifications, (6) Drawings and Schedules, (7) Details, (8) Addenda(s), and (9) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (8) hereinabove, are expressly cross-referenced therein or attached thereto.

CALENDAR DAY means every day shown on the calendar.

CERTIFICATE FOR PAYMENT means the statement from the RSI Director certifying both the undisputed amount of money due to Contractor and the amount of money, if any, that are disputed upon an Application for Payment.
CHANGE means a modification, change, addition, substitution or deletion in the Work or in Contractor’s means, methods, manner, time or sequence of performing the Work arising from any cause or circumstances, including, without limitation, either directly at the request of City or constructively by reason of other circumstances. Use of the term “Change,” in any context, in the Contract Documents shall not be interpreted as implying that Contractor is entitled to an adjustment increasing the Contract Sum or extending the Contract Time on any basis other than for Compensable Change or Compensable Delay.

CHANGE ORDER means a written instrument, signed by City and Contractor in accordance with the requirements of the General Conditions, designating any work that is a change of scope requiring additional expenditure of materials and labor and/or requiring additional time to complete. Its purpose is to establish the terms of City’s and Contractor’s mutual agreement to an adjustment of the Contract Sum or Contract Time on account of Compensable Change, Deleted Work, Compensable Delay or Excusable Delay.

CHANGE ORDER REQUEST means Contractor’s written request for an adjustment in the Contract Sum and/or Contract Time due to a Compensable Change, Compensable Delay or Deleted Work.

CITY means the City of Inglewood, a municipal corporation organized under the laws of the State of California, acting through the City Council or other representatives duly authorized by the City Council to act on City’s behalf.

CITY CONSULTANT means the designated Consultant, other than Architect, engaged by City (or engaged as a subconsultant to the Architect or Consultant) to provide professional advice with respect to the design, construction or management of the Project.

CITY COUNCIL means the City Council of the City of Inglewood.

CLAIM means a written demand or assertion by City or Contractor seeking, as a matter of right, an interpretation of contract, payment of money, recovery of
damages or other relief. A CLAIM does not include the following: (1) a tort claims for personal injury or death, (2) stop notice claims, (3) the right of City to specific performance or injunctive relief to compel performance, or (4) any rights remedies, administrative action, and/or penalties that the City has under applicable law.

CLOSE-OUT DOCUMENTS means the warranties, guarantees, maintenance and operations manuals that, along with electronic versions, are required to be delivered by Contractor to a Homeowner upon Final Completion of the Project Work at a Home.

COMPENSABLE CHANGE means Extra Work: (1) that is the result of (a) Differing Site Conditions, or (b) revisions in Applicable Laws enacted after the execution of the Construction Contract by City and Contractor, (c) a Change requested in a writing signed by RSI Director, or (d) other circumstances involving a Change in the Work or which Contractor is given under the Contract Documents a specific and express right to adjustment of the Contract sum; and (2) that is not caused, in whole or part, by the negligence or willful misconduct of Contractor or a Subcontractor of any Tier or a failure to comply with Contractor’s obligations under the Contract Documents; and (3) for which an adjustment to the Contract Sum is not prohibited by nor waived under the terms of the Contract Documents; and (4) that if performed would require Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such Extra Work.

COMPENSABLE DELAY means a Delay to the critical path of activities affecting Contractor’s ability to achieve Final Completion of the Project Work within the Contract Time, not caused, in whole or in part, by the negligence or willful misconduct of Contractor or a Subcontractor or any Tier or a failure to comply with Contractor’s obligations under the Contract Documents, and that is caused solely by any of the following: (1) a Compensable Change, (2) the active negligence of City, RSI Director, Architect, City Consultant or a Separate Contractor, or (3) other
circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to both an adjustment of the Contract Sum and/or Contract Time.

COMPLETION PUNCH LIST means the list of items of Work to be completed or corrected by Contractor for Final Completion of the Project Work.

CONSEQUENTIAL DAMAGES means damages incurred by either City or Contractor for loss of use, loss of profit or income, lost of revenue, lost opportunity, additional or unabsorbed overhead, loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation, loss of bonding and all similar indirect, economic damages that are caused as a result of either Delay or that result from a termination or suspension (for default or convenience) of all or any portion of the Construction Contract or the Work. Consequential Damages do not include direct or indirect damage or injury to persons or tangible property, including without limitation, the repair or replacement of tangible property damaged or lost.

CONSTRUCTION CONTRACT means the written contract contained in the Bidding Documents and executed between City and Contractor for the Work. The awarded contract shall include, but is not limited to: Advertisement, Contract Form, Proposal, Performance Bond, Payment Bond, any required insurance certificates, Specifications, Plans, and any addenda issued to bidders.

CONSTRUCTION SCHEDULE means the detailed, critical path schedule prepared by Contractor showing Contractor's plan for construction of the Work within the Contract Time and in accordance with the Contract Documents.

CONTRACT means the written agreement covering the work to be performed. See Construction Contract above for additional details.

CONTRACT DOCUMENTS means the following collection of documents governing Contractor's performance of the Work: (1) the Bidding Documents, (2) the Construction Contract between City and Contractor, other terms, conditions and
requirements applicable to the performance of the Construction Contract and Work (including General Conditions, any supplemental and Special Conditions and the General Requirements), Drawings, Specifications, Addenda issued prior to execution of the Construction Contract and other documents listed in the Construction Contract and Modifications issued after execution of the Construction Contract, (3) a Change Order signed by both City and Contractor and/or such others, if any, as required by the General Conditions, (4) a Unilateral Change Order signed by City and/or such others, if any, as required by the General Conditions, (5) a Field Order signed by City and/or such others, if any, as required by the General Conditions, (6) a written order for a Minor Change in the Work issued by the RSI Director, and (7) the Declaration of Sufficiency of Funds completed and signed by Contractor.

CONTRACT ITEM (PAY ITEM) means specific unit of work for which a price is provided in the contract.

CONTRACT SUM means the total amount of compensation stated in the Construction Contract, including adjustments authorized by Change Orders or Unilateral Change Orders, that is payable to Contractor for the performance of the Work in accordance with the Contract Documents.

CONTRACT TIME means the total number of Days set forth in the Construction Contract within which Contractor is obligated to submit Materials Confirmations and achieve Completion and Final Completion of the Project Work and/or Project Work, as adjusted for extensions of time permitted under the terms of the Contract Documents and approved by City.

CONTRACTOR means the person or entity under contract with City pursuant to the Construction Contract to serve as the general contractor for construction of the Work.

CONTRACTOR'S LABORATORY means the Contractor's quality control organization in accordance with the Contractor Quality Control Program.
DAY, whether capitalized or not, and unless otherwise specifically provided, means Monday, Tuesday, Wednesday, Thursday, and Friday, and does not include weekends or City recognized legal holidays. Please see Work Day for additional details.

DEFECTIVE WORK means Work by Contractor or a Subcontractor that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to Applicable laws, the Contract Documents or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

DELAY, whether capitalized or not, means any circumstances involving delay, disruption, hindrance or interference in the performance of the Work.

DELETED WORK means work that is eliminated due to a Change requested by City.

DESIGN DOCUMENTS means all plans, drawings, tracings, specifications, programs, reports, calculations, models, presentation materials and other materials or documents containing designs, specifications or engineering information prepared by the Architect, City Consultants, Contractor, Separate Contractors or Subcontractors including, without limitation, computer aided design materials, electronic data files and paper copies. The term “Design Documents” includes, without limitation, all building and other designs depicted therein, as well as the written documents themselves.

DIFFERING SITE CONDITION means an unforeseen condition at a Site or in Existing improvements at a Site. Specifically they are those conditions, located at a Site or in Existing Improvements, not otherwise ascertainable by Contractor through the exercise of thorough care and diligence in its inspection of the Sites and Bidding Documents, that constitute: (1) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Laws; or (2) subsurface or concealed
conditions at the Sites or concealed conditions in Existing Improvements which
differ materially from those indicated by the Contract Documents or other
information available to Contractor prior to submission of the Bid; or (3) unknown
physical conditions at the Sites or concealed conditions in Existing improvements of
an unusual nature, differing materially from those ordinarily encountered and
generally recognized as inherent in the Work of the character provided for in the
Contract Documents.

DISCOVERY DATE, used in reference to Contractor's obligation to give
written notice of certain facts, conditions or circumstances, means the earlier of the
dates the Contractor either: (1) discovered such facts, conditions or circumstances, or (2) should have discovered such facts, conditions or circumstances in the exercise of reasonable care practiced by the general contractors performing public works
construction projects in the Southern California area.

DRAINAGE SYSTEM means the system of pipes, ditches, and structures by
which surface or subsurface waters are collected and conducted from the airport
area.

DRAWINGS means the graphic and pictorial portions of the Contract
Documents prepared by the Architect or a City Consultant showing the design,
location and dimensions of the Work, including plans, elevations, details, schedules
and diagrams. The term “Drawings” is used interchangeably with “Plans.”

ENGINEER means the individual, partnership, firm, or corporation duly
authorized by the Owner to be responsible for engineering inspection
observation of the contract work and acting directly or through an authorized
representative.

EQUIPMENT means all machinery, together with the necessary supplies for
upkeep and maintenance, and also all tools and apparatus necessary for the proper
construction and acceptable completion of the work.
EVIDENCE OF INSURANCE means the statement, completed by Bidder in the form specified in the Contract Documents, evidencing the Bidder’s compliance with the insurance requirements of the Bidding Documents.

EXCUSABLE DELAY means a Delay, other than a Compensable Delay, to Contractor’s ability to perform within the Contract Time that is (1) not caused, in whole or in part, by the negligence or willful misconduct of Contractor or a Subcontractor of any Tier or a failure to comply with the obligations of Contractor under the Contract Documents; and (2) is unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractor, of any Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Contractor or any Subcontractor, nor any failure by a Subcontractor to perform any obligation imposed by contract or Applicable Laws, shall constitute a grounds for Excusable Delay.

EXTRA WORK means Work (other than Work that is either a logical evolution of the Architect’s detailing, refinement and clarification of the Drawings and Specifications that are part of the Contract Documents or that is reasonably inferable as necessary to satisfy the design intent for a completed and fully operational system, facility or structure) that is not indicated by the Contract Documents, the performance of which requires the expenditure by Contractor of additional and unforeseen Allowable Costs. Reference to Extra Work shall not be interpreted to mean or imply that Contractor is entitled to an adjustment to the Contract Sum or Contract Time unless such Extra Work constitutes a Compensable Change.

FAA means the Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or his or her duly authorized representative.

FEDERAL SPECIFICATIONS means the Federal Specifications and Standards, Commercial Item Descriptions, and supplements, amendments, and
indices thereto prepared and issued by the General Services Administration of the Federal Government.

FIELD ORDER means a written directive signed by the City and Contractor that: (1) directs the performance of a Minor Change, (2) directs performance of Work or a Change with respect to which there exists a dispute or question regarding adjustment of the Contract Sum or Contract Time, or (3) establishes a mutually agreed basis for compensation to Contractor for a Compensable Change or Deleted Work under circumstances where performance needs to proceed in advance of the Contractor having completed its substantiation and evaluation of the impact thereof on the Contract Sum or Contract Time.

FINAL COMPLETION, FINALLY COMPLETE means (1) with respect to Project Work, the point at which the following conditions have occurred with respect to such Work: (a) the entirety of such Work is fully completed, including all minor corrective, or "punch list," items, (b) a permanent and unconditional waiver for the entirety of such Work has been delivered to City, (c) all documents required to be submitted, including without limitation, warranties, guaranties and other Close-Out Documents, (d) the Homeowner has been instructed, by demonstration, in the use, operation and maintenance of mechanical equipment, (e) such Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufactures recommendations and buff dried by machine to bring the surfaces to sheen, and (f) all conditions set forth in
the Contract Documents for completion of such Work have been, and continue to be, fully satisfied; and (2) with respect to the Project Work, the point at which: (a) all of the conditions set forth in Clause (1) of the Paragraph have occurred for each and every Home comprising the Project; and (b) all contractors and subcontractors have been paid and there are no outstanding stop orders claims or claims of any kind that may delay the payment by the City of its ten-percent self-retention monies.

FORCE ACCOUNT planning, engineering, or construction work done by the Sponsor's employees.

FORCE MAJEURE EVENT means, and is restricted to, any of the following: (1) Acts of God, (2) terrorism or other acts of public enemy, (3) acts or omissions of Governmental Authorities beyond the reasonable foreseeability and control of Contractor, (4) epidemics or quarantine restrictions, (5) strikes, other than those resulting from a violation by Contractor or a Subcontractor of Applicable Laws or applicable collective bargaining agreements, resulting in the unavailability of workers or replacement workers, (6) acts or omissions of the Homeowner that Delay access to a Home or performance of the Work, or (7) unusual shortages in materials that are supported by documented proof that (a) Contractor made every effort to obtain such materials from all available sources located within a reasonable distance of the Site where those materials are to be used in performing the Work, (b) such shortage is due to the fact that such materials are not physically available or could not have been obtained only at exorbitant prices entirely inconsistent with current rates taking into account the quantities involved and the usual industry practices in obtaining such quantities, and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated at the time the Construction Contract was entered into.

GENERAL CONDITIONS means the herein set forth general terms and conditions.
HAZARDOUS SUBSTANCE means: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination," or words of similar import under any Environmental Law, including without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCB") and PCB-containing materials, whether or not occurring naturally; (2) lead paint, or (3) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

HOME means a dwelling or residence identified in the Contract Documents wherein Work is to be performed.

HOMEOWNER means the person(s) or entity (ies) who has executed a Participation Agreement with the City for performance of Program Modifications at a Home.

HOMEOWNER CONTRACTORS means contractors separately retained by a Homeowner to perform work at a Home, including without limitation, Contractor.

INSPECTOR means an authorized representative of the RSI Department assigned to make all necessary inspections, observations, and/or tests observation of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.

INSPECTOR OF RECORD means the Building Official for the City of Inglewood responsible, among others, for conducting inspections of Project Work.

INTENTION OF TERMS means whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the
direction, requirement, permission, order, designation, or prescription of the Engineer is intended; and similarly, the words “approved,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer, subject in each case to the final determination of the Owner.

Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.

KEY MATERIALS means air conditioning equipment, electrical upgrade as required, acoustic windows, acoustic doors, acoustic sliding glass doors, are required to perform the Project Work.

KEY PERSONNEL means those individuals employed by Contractor for performance of the Work that are considered of essence to Contractor’s consideration for the Construction Contract.

LABORATORY means the designated laboratory authorized by the RSI Director to test materials and work involved in the contract.

LOSS, LOSSES mean any and all economic and non-economic injuries, losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties. “Losses” do not include attorney’s fees or court costs, whether arising as an expense or cost or legal proceeding to which Contractor is a party or as a consequential damage claimed against Contractor by any third person.

MAJOR AND MINOR CONTRACT ITEMS. A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20% of the total amount of the award contract. All other items shall be considered minor contract items.

MATERIALS means any substance specified for use in the construction of the contract work.
MINOR CHANGE means a Change in the Work that does not involve either performance of Extra Work or an adjustment to the Contract Sum or Contract.

MODIFICATION means a written agreement of City and Contractor that amends, adds to or revises the provisions of the Construction Contract or other Contract Documents.

MOLD means mold, mildew, spores, or other microorganism of any type, nature or description or any by-product thereof, the presence of which poses an actual or potential threat to human health, including, without limitation, any species or organisms of the kingdom of fungi, or mycota, including yeasts, smuts, ruts, mildews, mold and mushrooms or any microbial contamination, either airborne or surface, which arises out of or is related to the presence of fungus or spores (including, without limitation, aspergilius, cladesprorium, penicillum and stachybortrys chartarum).

NOTICE OF COMPLETION means the written notice by RSI Director confirming the date that the Project Work is Finally Completed.

NOTICE TO PROCEED means the written notice issued by City to Contractor to begin the Project Work.

OWNER means the party of the first part or the contracting agency signatory to the contract. Where the term “Owner” is capitalized in this document, it shall mean airport Sponsor only.

PARTICIPATION AGREEMENT means the written agreement entered into between City and a Homeowner for performance of Program Modifications.

PASSENGER FACILITY CHARGE (PFC) Per 14 CFR Part 158 and 49 USC § 40117, a PFC is a charge imposed by a public agency on passengers enplaned at a commercial service airport it controls.”

PAVEMENT means the combined surface course, base course, and subbase course, if any, considered as a single unit.
PAYMENT BOND means the approved form of security furnished by the Contractor and his or her surety as a guaranty that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the work.

PERFORMANCE BOND means the approved form of security furnished by the Contractor and his or her surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.

PLANS means the graphic and pictorial portions of the Contract Documents prepared by the Architect or a City Consultant showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term “Plans” is used interchangeably with “Drawings.”

PROGRAM means the City’s residential sound insulation program, authorized by the City Council on April 29, 2008 pursuant to the January 2007 FAA “Terms and Conditions of Accepting Airport Improvement Grants”.

PROGRAM MODIFICATIONS means Work designated to be performed at a Home pursuant to the Program.

PROGRESS PAYMENTS means a monthly payment of a portion of the Contract Sum, exclusive of the Residence Retention and Project Retention, based on Contractor’s progress in the performance of the Work.

PROJECT COMPLETION DATE means the point at which the Project Work is: (1) sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by the Homeowner for its intended purpose (except for minor items which do not impair the Homeowner’s ability to so occupy and use such Work), (2) receipt by City of all permits and certificates by Governmental Authorities, if any, required to occupy and use such Work, and (3) all systems included in the Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted and instruction of Homeowner in the operation of the systems has been completed.
PROJECT OR PROJECT WORK means the totality of the Work to be
performed by Contractor under the terms of the Contract Documents for all Homes
covered by the Project Contract.

PROPOSAL means written offer of the bidder (when submitted on the
approved proposal form) to perform the contemplated work and furnish the
necessary materials in accordance with the provisions of the plans and
specifications

PROPOSAL GUARANTY means the security furnished with a proposal to
guarantee that the bidder will enter into a contract if his or her proposal is accepted
by the Owner.

REQUEST FOR EXTENSION means a formal written request required to be
submitted by Contractor pursuant to Article 23 of this Contract setting forth the
justification and support for Contractor’s request for adjustment in the Contract
Time due to an Excusable Delay or Compensable Delay.

REQUEST FOR INFORMATION means a written request by Contractor for
clarification of what it perceives to be discrepancies in the Contract Documents,
including, without limitation, information in the Contract Documents constituting
errors, omissions, conflicts, ambiguities, lack of coordination, noncompliance with
Applicable Laws or variances between the information in the Contract Documents
and field conditions.

RSI DIRECTOR means the Residential Sound Insulation Director of the City
of Inglewood acting either directly or through properly authorized agents, acting
within the scope of the particular duties entrusted to them.

SCHEDULE OF VALUES means a detailed, itemized breakdown of the
Contract Sum, which provides for a fair and reasonable allocation of the dollar
values to each of the various parts of the Work and for the Project Work.

SITE means: (1) the parcel(s) of land that are owned or leased by a
Homeowner upon which a Home is located, (2) all areas adjacent to such parcel(s)
that may be used by Contractor or Subcontractors for staging, storage, parking or
temporary offices, and (3) all land areas, both private and public, adjacent to such
parcel(s) on which Work is required to be performed under the Contract Documents
or Applicable Laws.

SPECIFICATIONS means the portion of the Bidding Documents consisting of
the written requirements for materials, equipment, standards and workmanship for
the Work and performance of related services.

SPONSOR. A Sponsor is defined in 49 USC § 47102(24) as a public agency
that submits to the FAA for an AIP grant; or a private Owner of a public-use airport
that submits to the FAA an application for an AIP grant for the airport.

STRUCTURE means airport facilities such as bridges, culverts, catch basins,
inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines;
underdrains, electrical ducts, manholes, handholes, lighting fixtures and bases,
transformers, flexible and rigid pavements, navigational aids; buildings, vaults,
and, other manmade features of the airport that may be encountered in the work
and not otherwise classified herein.

SUBCONTRACTOR means a person or entity that has a contract to perform
a portion of the Work, including without limitation, subcontractors, sub-
subcontractors, suppliers and vendors, of any and every Tier.

SUPERINTENDENT means the contractor’s executive representative who is
present on the work during progress, authorized to receive and fulfill instructions
from the Engineer, and who shall supervise and direct the construction.

SUPPLEMENTAL AGREEMENT means a written agreement between the
Contractor and the Owner covering (1) work that would increase or decrease the
total amount of the awarded contract, or any major contract item, by more than
25%, such increased or decreased work being within the scope of the originally
awarded contract, or (2) work that is not within the scope of the originally awarded
contract.
SURETY means Contractor's surety issuing the Bid, Performance and/or Labor and Material Bonds.

TIER means the contractual level of a Subcontractor with respect to Contractor. For example, a “first-tier” Subcontractor is under contract with Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the “second tier,” and so on. Use of the phrase “of every tier”, or similar phraseology, in the Contract Documents shall not be interpreted as implying that other provisions of the Contract Documents, where such phases are not used, are intended to be limited application to only the first Tier or to only certain Tiers of Subcontractors.

UNEXCUSED DELAY means any Delay that is not a Compensable Delay or Excusable Delay, including, without limitation, the following: (1) Delay caused by Contractor’s failure to comply with the Contractor’s Documents, (2) Delay for which Contractor has failed to provide timely and complete Request for Extension, or (3) Delay associated with any circumstances where costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor’s risk or Contractor's Own Expense.

UNILATERAL CHANGE ORDER means a writing signed by City in accordance with the General Conditions, in which City unilaterally sets forth its determination of the amount of adjustments to the Contract Sum or Contract Time due to a Compensable Change, Compensable Delay or Deleted Work.

WORK means the labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for Contractor to perform its obligations under the Contract Documents, including, without limitation, any Changes requested by City.

WORK DAY means Mondays, Tuesdays, Wednesday, Thursdays, and Fridays. It does not include Saturdays, Sundays, or Holidays recognized by the City of Inglewood.
Other terms appearing in the Standard Specifications shall have the intent and meaning specified therein.

Article 3 – ADDITIONAL REFERENCES

Conformance with the provisions for safety practices set forth CAL-OSHA in the "Construction Safety Orders", published by the State of California, Department of Industrial Relations, Division of Industrial Safety, shall take precedence over any requirements of these specifications.

Whenever in these specifications references are made to published specifications, standards, or other requirements, it shall be understood that the latest specifications, standards, or requirements of the respective issuing agencies, which have published as of the date that the work is advertised for bids, shall apply; except as otherwise specified herein, and except to the extent that said standards or requirements may be in conflict with applicable laws, ordinances, or governing codes.

No requirements set forth herein or shown on the drawings shall be waived because of any provision of, or omission from, said standards or requirements.

References in these specifications to "Standard Specifications" shall mean the Standard Specifications for Public Works Construction, 2009 Edition, including all current supplements, addenda, and revisions thereof.

References herein to "Building Code" shall mean the California Building Code, 2007 Edition, as published by the International Conference of Building Officials, which Code is hereby incorporated in and made a part of these specifications to the extent of the applicable references thereto.

References herein to "Standard Details" shall mean the various City of Inglewood Residential Sound Insulation Department Standards which details are hereby incorporated in and made a part of these specifications.

References herein to "OSHA" Safety and Health Regulations for Construction" shall mean Title 29, Part 1926, Construction Safety and Health
Regulations, Code of Federal Regulations (OSHA), including all changes and amendments thereto.

References herein to "OSHA" Safety and Health Standards" shall mean Title 29, Part 1910, Occupational Safety and Health Standards, Code of Federal Regulations (OSHA), including all changes and amendments thereto.

Article 4 – SCOPE OF SERVICES

Contractor shall perform the professional residential sound insulation services contemplated by this Agreement and approved by the City Council on May 7, 2019, in accordance with the specifications for residential sound insulation, Phase XV, Group 23, Job No. RSI-271 CB-19-02, (any) Addendums #1 dated March 11, 2019, and Contractor's Bid Proposal and Statement and attached hereto, respectively as Exhibits “A”, Exhibit “B”, and Exhibit “C”, and incorporated herein by this reference as if set forth in full.

The work to be performed under this contract shall consist of furnishing all plant, tools, equipment, materials, supplies, and manufactured articles and for furnishing all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the contract in strict accordance with the specifications, schedules, drawings, and other Contract Documents as herein before defined, all of which are made a part hereof, and including such detail sketches as may be furnished by the RSI Director from time to time during construction in explanation of said drawings. The work shall be complete, and all work, materials, and services not expressly called for in the specifications or not shown on the drawings which may be necessary for the complete and proper construction of the work in good faith shall be performed, furnished, and installed by the Contractor as though originally so specified or shown, at no increase in cost to the City.

The Contractor shall check all dimensions and quantities on the drawings or schedules herein contained or given by the RSI Director, and shall notify the RSI
Director of all errors therein which may be discovered by examining and checking
the drawings. The Contractor shall not take advantage of any error or omission in
these specifications, or in the drawings or schedules, but, should such error or
omission be discovered, the Contractor shall obtain instructions from the RSI
Director and the Contractor shall carry out such instructions as if originally
specified.

The Contractor shall verify all dimensions in the field and shall check field
conditions continuously during construction. The Contractor shall be solely
responsible for any inaccuracies built into the work.

The Contractor shall inspect related and appurtenant work and shall report
in writing to the RSI Director any conditions, which will prevent proper completion
of the work.

Any required removal, repair, or replacement caused by unsuitable conditions
shall be done by the Contractor at his sole cost and expense.

**Article 5 – DUTIES OF CITY**

The City hereby promises and agrees to employ and compensate the
Contractor for the services rendered pursuant to this Agreement.

**Article 6 – COMPENSATION**

1. Contract or shall be paid, in the ordinary course of City business, an
   amount not to exceed $565,771.49 (Five Hundred and Sixty-Five Thousand, Seven
   Hundred and Seventy-One and Forty-Nine Cent) and a contingency fee not to
   exceed $56,577.15 (Fifty-Six Thousand, Five Hundred and Seventy-Seven and
   Fifteen Cent) for services faithfully rendered.

2. Contractor will, from the date of City’s Notice to Proceed, invoice City
every thirty (30) days for services contemplated hereunder and which have been
completed within that thirty (30) day period. City shall pay Contractor in the
ordinary course of City business, and agrees that it will use its best efforts to avoid
all unnecessary delays in processing Contractor’s invoices.
Article 7 – TERM

The term of this Agreement shall be for a period of twelve (12) months from the date of City’s Notice to Proceed. The Project Work shall be completed within ninety-three (93) Working Days from the date of City’s Notice to Proceed.

Article 8 – TERMINATION

This Agreement shall be subject to termination by the City upon its own discretion or when conditions encountered during the work contemplated hereunder makes it impossible or impracticable to proceed, or when the City is prevented from proceeding with the Agreement by law or by official action of a public authority and/or convenience. The City shall give notice of termination by a method specified in Article 9 of this Agreement. If the City terminates for convenience, then the Contractor is entitled to receive, as full and complete compensation, and in lieu of any and all forms of damages, (i) the amount paid to for all Work performed in accordance with the Contract Documents; (ii) the amount for any and all materials and/or equipment ordered (which cannot be cancelled); Contractor fully acknowledges the potential effect and the liquidating nature of the termination for convenience provision and, having received the independent advice of legal counsel, agrees to it without reservation.

Payment for omitted items. As specified in the subsection the RSI Director/Engineer shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner. Should the RSI Director/Engineer omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the RSI Director’s/Engineer order to omit or non-perform such contract item.
Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the RSI Director's/Engineer order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the RSI Director's/Engineer order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs. Contractor fully acknowledges the potential effect and the liquidating nature of the termination for convenience provision and, having received the independent advice of legal counsel, agrees to it without reservation.

**Article 9 – NOTICES**

All notices required or permitted to be given under this Agreement shall be in writing or sent by certified mail and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party.

**Notice to City**

If notice is given to City, it shall be by personal delivery thereof to City or by depositing same in United States Mail, enclosed in a sealed envelope postage prepaid and return receipt requested and addressed to City as follows:

City:
Yvonne Horton
City Clerk
City of Inglewood
One Manchester Blvd.
Inglewood, CA 90301
With copies to:
Bettye R. Griffith
Residential Sound Insulation Director
City of Inglewood
One Manchester Blvd.
Inglewood, CA 90301

Contractor:
Hyun Sook Joh
President
HHJ Construction Inc.
11156 S. Main Street
Los Angeles, CA 90061

Agent for Service of Process:
Britton Christiansen
534 E. Badillo Street
Covina, CA 91723

Notice of Contractor
If notice is given to Contractor, it shall be by personal delivery thereof to Contractor or to Contractor's project manager or superintendent at a Site, or by depositing same in United States Mail, enclosed in a sealed envelop addressed to Contractor at its last known address for its regular place of business and sent by registered or certified mail with postage prepaid.

Notice of Surety
If notice is given to Surety, it shall be by personal delivery to the Surety or by depositing same in United States mail, enclosed in a sealed envelope, addressed to the Surety at the address of the Surety shown in the applicable Performance Bond or Payment Bond (or, if none is shown, the last known address for the Surety), and sent by registered or certified mail with postage prepaid.

Agent for Service of Process
Contractor, during the time of this Agreement or any extension or amendment, shall provide, in writing, the name and address of its Agent for Service
of Process to City within ten (10) calendar days of Contractor's appointment of a
different Agent than that listed above.

Effective Date of Notice

Notice shall be deemed effective on the date personally delivered or, if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service, properly addressed, with postage prepaid and return receipt requested.

Article 10 – INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the Contractor.

Minimum Scope of Coverage

Coverage shall procure and maintain for the duration of the contract insurance that shall be at least as broad as indicated hereunder:

1. Insurance Services Office, Inc. (ISO) Commercial General Liability coverage (occurrence Form CG 00 01) or ISO (Form CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form – Coverage for Operations of Designated Contractor.

2. ISO Form CA 00 01 covering Automobile Liability, code 1 (any auto).

3. Workers Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor shall maintain these policies and shall cause all parties supplying services, labor, or materials to maintain the following insurance in amounts not less than those specified below:
1. General Liability (Including operations, products and completed operations): $1,500,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,500,000 per accident for bodily injury or property damage.

3. Employer’s Liability: $1,000,000 per accident for bodily injury or disease.

4. Workers Compensation insurance limits as required by the State of California.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Inglewood City Attorney’s office. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Inglewood City Attorney’s office guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Other Insurance Provisions

The general liability policy and automobile liability policy are to contain, or shall be endorsed to contain, the following provisions:

1. The City of Inglewood, its officers, officials, employees and volunteers are to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in
connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance, or as a separate owner’s policy.

2. For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor’s insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been given to the City by certified mail, return receipt requested.

4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

CRIME/FIDELITY INSURANCE, including coverage against loss of money, securities, inventory or other property. This insurance shall provide coverage for alleged employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, counterfeiting, and other criminal acts with limits in amounts not less than indicated below:

- Employee Theft Coverage $1,000,000
- Forgery Coverage $1,000,000
- Client Coverage $1,000,000

POLLUTION LIABILITY INSURANCE including coverage for bodily injury, property damages, and environmental damage with limits of not less than the following:

- General Aggregate $1,000,000
Completed Operations $1,000,000
Each Occurrence $500,000

Said policy shall also include, but not be limited to: coverage for any and all remediation costs, including, but not limited to, restoration costs, a coverage for the removal, repair, handling, and disposal of asbestos and/or lead containing materials. The Public Agencies and their Agents shall be covered as additional insureds on the pollution liability insurance policy. If the general liability insurance policy and/or the pollution liability insurance policy is written on a claims-made form, then said policy or policies shall also comply with all of the following requirements:

(i) The retroactive date must be shown on the policy and must be before the date of this Contract or the beginning of the Work;

(ii) Insurance must be maintained and evidence of insurance must be provided for the duration of this Contract or for five (5) years after completion of the Work, whichever is greater;

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Contract, then the CONTRACTOR must purchase an extended period coverage for a minimum of five (5) years after completion of Work;

(iv) A copy of the claims reporting requirements must be submitted to the RSI Department for review; and

(v) If Work involves lead based paint or asbestos identification/remediation, then the CONTRACTOR's Pollution Liability Shall not contain any lead based paint or asbestos exclusions.

CONTRACTOR agrees that it will require that all of the above mentioned insurance requirements be incorporated in its contract with any entity with
which it contracts in relation to this Contract or in relation to the Work, Property or project that is the subject of this Contract.

Acceptability of Insurers

Insurance is to be placed with an insurer admitted to write insurance in California or placed by a non-admitted insurer on California's List of Approved Surplus Lines Insurers (LASLD). Any insurer, whether admitted or non-admitted, shall have a current A.M. Best Company or its equivalent of not less than A-VII.

Verification of Coverage

Contractor shall furnish the City of Inglewood with original certificates and endorsements, including amendatory endorsements, affecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Inglewood City Attorney's Office before work commences; however, failure to do so shall not operate as a waiver of these insurance requirements. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Waiver of Subrogation

Contractor hereby agrees to waive subrogation which any insurer of contractor may acquire from contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the City for all work performed by the contractor, its agents, employees, independent contractors and subcontractors.

Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
Article 11 – BONDS

Contractor agrees that, at all times during the performance of the services contemplated by this Agreement, it shall keep and maintain the following Contract Bonds in the amount of the contract sum:

1. Bid Bond
2. Performance Bond
3. Payment Bond

Said bonds shall be in the form approved by the Inglewood City Attorney and shall be satisfactory to City.

Bid Bond

As a guaranty of good faith, each bidder shall submit with their proposal an unconditional bidder's bond or certified or cashier's check, drawn on a solvent State or national bank, or cash in the sum stated in the Invitation to Submit Bids, payable to the City of Inglewood, said bidder's bond or check to be held uncollected until it becomes subject to disposal as herein provided. Any condition or limitation placed upon said bidder's bond or check will render it informal and may, at the option of the City, result in the rejection of the proposal under which such bidder's bond or check is submitted. If a bidder to whom an award is made fails or refuses to execute the contract and furnish the required bonds, all within the time stated, said bidder's bond or check and the monies represented thereby, or the cash guaranty, shall be and remain the property of the City and shall be subject to deposit with the Treasurer of the City as other monies belonging to the City, the amount thereof being agreed to by the bidder as liquidated damages due the City. Within 15 days after the award of the contract, the City of Inglewood will return the proposal guarantees accompanying such as the proposals that are not to be considered in making the award. All other proposal guarantees will be held until the contract has been finally executed, after which they will be returned to the respective bidders whose proposal they accompany.
Return of proposal guaranty. All proposal guaranties, except those of the three
lowest bidders, will be returned immediately after the Owner has made a
comparison of bids as specified in the subsection 30-01 titled CONSIDERATION OF
PROPOSALS of this section. Proposal guaranties of the two lowest bidders will be
retained by the Owner until such time as an award is made, at which time, the
unsuccessful bidder’s proposal guaranty will be returned. The successful bidder’s
proposal guaranty will be returned as soon as the Owner receives the contract
bonds as specified in the subsection 30-05 titled REQUIREMENTS OF CONTRACT
BONDS of this section.

Performance Bond

The Contractor agrees to at all times during the performance of the
agreement obtain, keep, and maintain a faithful performance bond in the amount
equal to one hundred percent (100%) of the Contract price. Said bond shall
 guarantee to the City the prompt, faithful and competent performance of each and
every term, condition and provision set forth in the Contract Documents, said
Contract Documents to be incorporated into the Performance Bond by express
reference therein. Said Bond and the obligations of Surety thereunder shall remain
in full force and effect for as long as the Principal/Contractor’s obligations remain in
effect vis a vis the City. Said bond shall also be in the form and have the content
required for approval by the City Attorney.

Payment Bond

Upon demand by the City, and before Contractor begins Work, of any kind
for the Project, the Contractor shall post a Payment Bond pursuant to the
requirements of Civil Code section 3247 et. Seq. Contractor shall keep such bond in
force and effect as required by applicable law, but in no case less than seven (7)
months from the date of acceptance of the Project by the City. Said Bond shall be in
an amount equal to one hundred percent (100%) of the Contract price. Said bond
shall be in the form approved by the City Attorney.
Article 12 – INDEMNIFICATION

Contractor shall indemnify and hold harmless the City and its officers, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Contractor has agreed to indemnify Indemnitees as provided above, Contractor, upon notice from City, shall defend Indemnitees at Contractor's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Contractor under this Article shall ensure Contractor's obligations under this section, but the limits of such insurance shall not limit the liability of Contractor hereunder. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

Responsibility for damage claims. The Contractor shall indemnify and save harmless the RSI Director/Engineer and the Owner and their officers, and employees from all suits, actions, or claims, of any character, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts
arising or recovered under the “Workmen’s Compensation Act,” or any other law, 
ordinance, order, or decree. Money due the Contractor under and by virtue of his or
her contract considered necessary by the Owner for such purpose may be retained
for the use of the Owner or, in case no money is due, his or her surety may be held
until such suits, actions, or claims for injuries or damages shall have been settled
and suitable evidence to that effect furnished to the Owner, except that money due
the Contractor will not be withheld when the Contractor produces satisfactory
evidence that he or she is adequately protected by public liability and property
damage insurance.

Third party beneficiary clause. It is specifically agreed between the parties
executing the contract that it is not intended by any of the provisions of any part of
the contract to create for the public or any member thereof, a third party beneficiary
or to authorize anyone not a party to the contract to maintain a suit for personal
injuries or property damage pursuant to the terms or provisions of the contract.

Personal liability of public officials. In carrying out any of the contract
provisions or in exercising any power or authority granted by this contract, there
shall be no liability upon the RSI Director/Engineer, his or her authorized
representatives, or any officials of the Owner either personally or as an official of
the Owner. It is understood that in such matters they act solely as agents and
representatives of the Owner.

Article 13– LIQUIDATED DAMAGES

It is agreed to by the parties to the contract that in case all the work called
for under the contract is not completed expeditiously, safely, and per all of the rules
set forth in the contract documents before or upon the expiration of the time limit as
set forth in these specifications, damage will be sustained by the City of Inglewood
and the homeowners who take part in this program (in terms of inconvenience, lost
productivity, lost work, lost income, additional administrative costs, and other costs
both tangible and intangible). It is also agreed by the parties that it is and will be
impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is, therefore, agreed that the City of Inglewood shall be entitled to recover the following amounts set forth below as Liquidated Damages from the contractor; and in case the same are not paid, agrees that the City of Inglewood may deduct the amount thereof from any money due or that may become due the Contractor under the contract.

Failure to complete on time. For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in the subsection 80.07 titled DETERMINATION AND EXTENSION OF CONTRACT TIME of this Section) the sum specified in the contract and proposal as liquidated damages will be deducted from any money due or to become due the Contractor or his or her surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages including but not limited to additional engineering services that will be incurred by the Owner should the Contractor fail to complete the work in the time provided in their contract.

The RSI Director/Engineer should list the liquidated damages cost per schedule and allowed construction time per schedule to clarify when more than one schedule of work is bid, or in the event all schedules bid cannot be awarded.

The amount of the liquidated damages should not be unreasonable, excessive, or punitive. Liquidated damages must reflect a reasonable estimate of the actual costs which will be incurred by the Owner and users of the airport and must not be punitive. An excessive value for liquidated damages may not be enforceable.

The maximum construction time allowed for Schedules 93 working days will be the sum of the time allowed for individual schedules but not more than six (6) working days for properties with windows and doors only. Properties that receive full product installation will have ten (10) working days. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its
completion, or after the date to which the time for completion may have been
extended, will in no way operate as a waiver on the part of the Owner of any of its
rights under the contract.

Failure to Complete the Work in the Time Agreed Upon

The Contractor shall complete the Work for each Home within the
Construction Period and all Contract Work within the Contract Period.

If the Contractor either:

1. Fails to provide to the City of Inglewood manufacturer's written order
   confirmations, within twenty five (25) working days after Field Measurement
   Verification (FMV), for all materials required for the Project by the Plans and
   Specifications, or

2. Fails to Complete the Work in a home within six (6) consecutive
   working days for properties with window and door installation, or ten (10)
   consecutive working days for properties receiving full product installation, after
   commencement of the Work in such home, or such longer period as may be
   permitted by RSI Director/Engineer, or

3. Fails to Complete all Work in the Project within the Contract Period,
   unless the date for Substantial Completion or Final Completion is extended
   pursuant to a Change Order, then

   The City of Inglewood will issue a change order credit to the contract (thereby
   reducing the contract value) by One Thousand Dollars ($1000) for each day that
   items (1), (2) or (3) are not met.

Multiple Correction Notices

The Contractor shall receive only one Correction Notice for the same issue, or
issues within the same specification section, without sanction. Additional
Correction Notices indicate an unwillingness of the contractor to abide by the
contract that he/she has entered into. The City may impose Liquidated Damages of
Three Hundred Dollars ($300) for each correction notice, which is written on the same issue, or concerning the same section of the specifications.

As an example, if a Correction Notice was issued for “Improper window installation - failure to properly block a window”, and a second Correction Notice (at the same or different dwelling) was issued for “Improper window installation – failure to abide by window installation details,” then Liquidated Damages of $300 may be recovered from the Contractor because of the repetitive nature of the Correction Notices – namely that the same section of the specifications was violated and the same general issue was repeated. In this example, the contractor displayed an unwillingness to abide by the entirety of the window installation rules and details. If the Contractor were to receive a third, fourth, fifth, etc. Correction Notice for window installation deficiencies, then Liquidated damages of $300 may again be assessed on the Contractor for each repetitive occurrence.

The City of Inglewood will issue a change order credit to the contract (thereby reducing the contract value) by Three Hundred Dollars ($300) in the case of repetitive correction notices.

Article 14 – INGLEWOOD BUSINESS LICENSE

The Contractor agrees to at all times during the performance of the Agreement, obtain and maintain an Inglewood City business license. A copy of said license must be forwarded to the Residential Sound Insulation Department prior to commencing work.

Article 15 – “OR EQUAL” CLAUSE

Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in
the opinion of the RSI Director of equal substance and function. Said materials, article or equipment shall not be purchased or installed by the Contractor without the RSI Director's written approval.

The awarded bidder wishing to make an “or equal” request must make such request in writing to the RSI Director within (7) seven days after the bid award date.

**Article 16 – PERMITS, COSTS AND NOTICES**

**Agency Permits**

Wherever the property of the Federal Government, the State of California, the County of Los Angeles, the City of Inglewood, any local utilities, or of any other agency is affected by the work included in this contract, the Contractor shall procure all permits, give all notices necessary, and bear the cost of all permits and inspection lawfully exacted by said Government, State, County, City, District, Department, or other agency during the time of performing the work affecting said property. In addition, the Contractor shall bear all cost of traffic regulation and traffic control devices lawfully exacted by said State, County, City, or other agency during the time of performing the work affecting said property. Work may not start unless all permits are pulled. The Contractor will bear all the burden of construction delays caused by delays in pulling permits. Permits for all trades for all units must be pulled at one time.

1. **Laws to be observed.** The Contractor shall keep fully informed of all Federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner and all his or her officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance,
regulation, order, or decree, whether by the Contractor or the Contractor's employees.

Permits, licenses, and taxes. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful execution of the work.

Patented devices, materials, and processes. If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the Patentee or Owner. The Contractor and the surety shall indemnify and hold harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the execution or after the completion of the work.

Plan Check

The Contractor shall procure and the bear the costs of obtaining a plan check from the “Planning Division” of the City’s Planning and Building Department prior to the commence of the Work.

Work within the Public Rights of Way

Contractor shall notify, verbally or in writing the “Permit Section” of City’s Public Works Department at least forty-eight (48) hours prior to starting any Work within a public street or right-of-way. If notice is verbal, Contractor shall prepare and maintain a written record of such notice. Neither the terms hereof nor anything shown on the drawings in connection with rights-of-way provided by the City shall be construed to entitle the Contractor to conduct operations in said rights-of-way in violation of existing regulations restricting interference with watercourses and drainage channels. The Contractor shall take adequate precautions against obstructing storm water flow in any affected watercourse or channel, and shall not
deposit excavated materials in any area where they might interfere with or be subject to erosion from such flow.

The Contractor shall be responsible for making their own arrangements for parking facilities, storage areas, and staging area; the Contractor shall obtain written permission from the owners of the affected property for such use, and a copy of each such written permit shall be furnished to the City and property owners for their protection and records.

The Contractor shall indemnify and hold harmless the City from all claims for damages occasioned by such actions.

**Encroachment Permits**

Contractor shall obtain encroachment permit(s) from the City's Public Works Department prior to start of any Project Work. The costs of such permits are included on the Contract Sum.

**Notice to Homeowners**

No later than the earlier of either (1) ten (10) working days after Contractor receives a copy of the Construction Contract signed by City; or (2) five (5) Days after receipt of Notice to Proceed, the Contractor shall notify, verbally or in writing, the Homeowners of a Home where Project Work is to be performed of the following: (1) the name and contact information for the Contractor, including, without limitation, the name and phone number of a person to contact in the event of an emergency; (2) the date(s) that Contractor intends to conduct any pre-construction inspections at the Home (including alternative dates that are available in the event that the inspection cannot take place on the date requested by Contractor); (3) the date that Project Work is anticipated to be Finally Completed at the Home; and (4) a brochure, in such form and content as approved by City, providing general information about the program. If the Homeowner cannot be contacted after three (3) attempts on different Days during the hours of 8:00 am to 7:00 pm, then a notice in the form of a “door hanger”, approved by City as to form and content, shall be left
at the main doorway entrance to the Home requesting the Homeowner to contact the Contractor. If Contractor is unable after complying with the requirements of the paragraph to contact Homeowner, Contractor shall immediately notify RSI Director in writing.

**Notice To Adjacent Property Owners**

No later than forty-eight (48) hours before commencing the Project Work of a Home, Contractor shall notify, verbally or in writing, all residents and businesses that will be impacted by the Work and all residents and businesses (whether or not impacted) located within half a block radius of such Home, as needed. If notice is verbal, Contractor shall prepare a written record of such notice. If the resident or business cannot be contacted after three (3) attempts on different Days during the hours of 8:00 am to 7:00 pm, then a notice in the form of a “door hanger”, approved by City as to form and content, shall be left at the main doorway entrance to the residence or structure.

**Liability Insurance for Permits**

Where required under the terms of the permits, the Contractor shall obtain liability insurance acceptable to and in an amount required by the public agency having jurisdiction. The policy shall insure said agency against all claims arising out of or in connection with the work to be performed by the contractor and shall remain in full force and effect until the work is accepted by the City. The Contractor shall furnish to each such agency a certificate of protective liability insurance showing the protection afforded and the amount thereof.

**Article 17 – RESPONSIBILITIES OF PROJECT SUPERINTENDENT**

The Contractor shall submit, at the initial pre-construction meeting, written qualification of the proposed project superintendent, for City review. The approved superintendent shall be on the project site full time and will be responsible for all general contract and subcontract work on the project. The approved superintendent
shall be assigned to one construction project only. The approved Superintendent shall attend all field measurement verifications.

The Construction Manager for the City will have sole responsibility for obtaining approval of qualifications. The Superintendent shall be fully capable of scheduling, monitoring, and controlling the work of all trades that are performing work for this Project and of answering Owners/Tenants questions and concerns without consulting other off-site persons unless design or contractual issues require special consultation. The Contractor will provide a dedicated superintendent to each group of dwellings awarded, regardless of the number of group contracts the Contractor has won. Superintendent must be responsible for a maximum of one project at any time and shall be assigned for a time period that at least includes the period from Notice to Proceed through Notice of Completion.

**Article 18 – AUTHORITY OF THE RSI DIRECTOR**

All work of the contract will be supervised by the RSI Director. References to "RSI Director" in Division 1 which concern administrative aspects of the contract including provisions for time for commencing and completing work and extension of time shall be understood literally as meaning the RSI Director or an authorized representative.

The RSI Director shall have the authority to give such general directions and exercise such control as may be necessary to ensure that work on the project is in strict compliance with the Contract Documents. The RSI Director shall determine the adequacy of the Contractor's methods, plant, and equipment and may issue such directions relative to the sufficiency of forces as may be reasonably necessary to insure proper and continuous execution of the work. The RSI Director shall have the authority to stop the work, if necessary, to prevent its improper execution and shall determine the amount, quality, and fitness of the several kinds of work. The RSI Director shall have the authority to reject all work which does not conform to the requirements of the contract and shall have power to make such other decisions
as provided in these specifications. All instructions, rulings, and decisions of the
RSI Director shall be final and binding unless formal protest is made under the
provisions for "Rights and Remedies; Claims and Protests" in Article 55 of this
Contract.

The RSI Director shall have executive authority to enforce such decisions and
orders which the Contractor shall carry out promptly. **The RSI Director shall have
the authority to issue change orders not to exceed 10% of contract amount**, and time
extensions as he deems necessary to best serve the City's interests.

**Character of workers, methods, and equipment.** The Contractor shall, at all times,
employ sufficient labor and equipment for prosecuting the work to full completion in
the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the
work assigned to them. Workers engaged in special work or skilled work shall have
sufficient experience in such work and in the operation of the equipment required to
perform the work satisfactorily.

Any person employed by the Contractor or by any subcontractor who violates
any operational regulations or operational safety requirements and, in the opinion
of the RSI Director/Engineer, does not perform his work in a proper and skillful
manner or is intemperate or disorderly shall, at the written request of the RSI
Director/Engineer, be removed forthwith by the Contractor or subcontractor
employing such person, and shall not be employed again in any portion of the work
without approval of the RSI Director/Engineer.

Should the Contractor fail to remove such persons or person, or fail to furnish
suitable and sufficient personnel for the proper execution of the work, the RSI
Director/Engineer may suspend the work by written notice until compliance with
such orders.

All equipment that is proposed to be used on the work shall be of sufficient
size and in such mechanical condition as to meet requirements of the work and to
produce a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the RSI Director/Engineer. If the Contractor desires to use a method or type of equipment other than specified in the contract, the Contractor may request authority from the RSI Director/Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the RSI Director/Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the RSI Director/Engineer may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this subsection.

**Temporary suspension of the work.** The Owner shall have the authority to suspend the work wholly, or in part, for such period or periods as the Owner may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the execution of the work, or for such time as is
necessary due to the failure on the part of the Contractor to carry out orders given
or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Owner, in writing, to
suspend work for some unforeseen cause not otherwise provided for in the contract
and over which the Contractor has no control, the Contractor may be reimbursed for
actual money expended on the work during the period of shutdown. No allowance
will be made for anticipated profits. The period of shutdown shall be computed from
the effective date of the RSI Director's/Engineer order to suspend work to the
effective date of the RSI Director's/Engineer order to resume the work. Claims for
such compensation shall be filed with the RSI Director/Engineer within the time
period stated in the RSI Director/Engineer's order to resume work. The Contractor
shall submit with his or her claim information substantiating the amount shown on
the claim. The RSI Director/Engineer will forward the Contractor's claim to the
Owner for consideration in accordance with local laws or ordinances. No provision of
this article shall be construed as entitling the Contractor to compensation for delays
due to inclement weather, for suspensions made at the request of the Owner, or for
any other delay provided for in the contract, plans, or specifications.

If it should become necessary to suspend work for an indefinite period, the
Contractor shall store all materials in such manner that they will not become an
obstruction nor become damaged in any way. The Contractor shall take every
precaution to prevent damage or deterioration of the work performed and provide
for normal drainage of the work. The Contractor shall erect temporary structures
where necessary to provide for traffic on, to, or from the airport.

**Determination and extension of contract time.** The number of calendar or
working days allowed for completion of the work shall be stated in the proposal and
contract and shall be known as the CONTRACT TIME.

Should the contract time require extension for reasons beyond the
Contractor's control, it shall be adjusted as follows:
a. CONTRACT TIME based on WORKING DAYS shall be calculated weekly by the RSI Director/Engineer. The RSI Director/Engineer will furnish the Contractor a copy of his or her weekly statement of the number of working days charged against the contract time during the week and the number of working days currently specified for completion of the contract (the original contract time plus the number of working days, if any, that have been included in approved CHANGE ORDERS or SUPPLEMENTAL AGREEMENTS covering EXTRA WORK).

The RSI Director/Engineer shall base his or her weekly statement of contract time charged on the following considerations:

(1) No time shall be charged for days on which the Contractor is unable to proceed with the principal item of work under construction at the time for at least six (6) hours with the normal work force employed on such principal item. Should the normal work force be on a double-shift, 12 hours shall be used. Should the normal work force be on a triple-shift, 18 hours shall apply. Conditions beyond the Contractor’s control such as strikes, lockouts, unusual delays in transportation, and temporary suspension of the principal item of work under construction or temporary suspension of the entire work which have been ordered by the Owner for reasons not the fault of the Contractor, shall not be charged against the contract time.

(2) The RSI Director/Engineer will not make charges against the contract time prior to the effective date of the notice to proceed.

(3) The RSI Director/Engineer will begin charges against the contract time on the first working day after the effective date of the notice to proceed.

(4) The RSI Director/Engineer will not make charges against the contract time after the date of final acceptance as defined in the subsection 50-15 titled FINAL ACCEPTANCE of Section 50.

(5) The Contractor will be allowed one (1) week in which to file a written protest setting forth his or her objections to the RSI Director/Engineer’s weekly
statement. If no objection is filed within such specified time, the weekly statement shall be considered as acceptable to the Contractor.

The contract time (stated in the proposal) is based on the originally estimated quantities as described in the subsection 20-05 titled INTERPRETATION OF ESTIMATED PROPOSAL QUANTITIES of Section 20. Should the satisfactory completion of the contract require performance of work in greater quantities than those estimated in the proposal, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the proposal. Such increase in contract time shall not consider either the cost of work or the extension of contract time that has been covered by change order or supplemental agreement and shall be made at the time of final payment.

b. Contract Time based on calendar days shall consist of the number of calendar days stated in the contract counting from the effective date of the notice to proceed and including all Saturdays, Sundays, holidays, and non-work days. All calendar days elapsing between the effective dates of the Owner’s orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.

At the time of final payment, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the proposal. Such increase in the contract time shall not consider either cost of work or the extension of contract time that has been covered by a change order or supplemental agreement. Charges against the contract time will cease as of the date of final acceptance.

c. When the contract time is a specified completion date, it shall be the date on which all contract work shall be substantially complete.
If the Contractor finds it impossible for reasons beyond his or her control to
complete the work within the contract time as specified, or as extended in
accordance with the provisions of this subsection, the Contractor may, at any time
prior to the expiration of the contract time as extended, make a written request to
the Owner for an extension of time setting forth the reasons which the Contractor
believes will justify the granting of his or her request. Requests for extension of
time on calendar day projects, caused by inclement weather, shall be supported
with National Weather Bureau data showing the actual amount of inclement
weather exceeded what could normally be expected during the contract period. The
Contractor's plea that insufficient time was specified is not a valid reason for
extension of time. If the supporting documentation justify the work was delayed
because of conditions beyond the control and without the fault of the Contractor, the
Owner may extend the time for completion by a change order that adjusts the
contract time or completion date. The extended time for completion shall then be in
full force and effect, the same as though it were the original time for completion.

Article 19 – CONSTRUCTION SCHEDULE AND REQUIRED MEETINGS

Preparation of Initial Proposed Construction Schedule

Within twenty-five (25) working days after receipt of the Notice of Intent to
Award, or at the initial pre-construction meeting, which ever comes first, the
Contractor shall prepare and submit a initial proposed Construction Schedule in
suitable format such as a bar diagram indicating starting date and completion date
of each subdivision of trade or work in the project. Said proposed construction
schedule shall provide a practical work plan under which the project shall be
completed within the Contract time. In preparing the proposed Construction
Schedule, Contractor shall consult and exchange information with the
Subcontractors so as to achieve optimum coordination of the activities of the
Subcontractors on a Site and shall arrange the Work so as to cause a minimum of
inconvenience to the Homeowners. Such proposed schedule for the work shall
include sub-schedules of related activities which are essential to its progress. It is
expressly understood and agreed that the time of beginning, the rates of progress,
and the time of completion of the work are in the essence of this Contract and shall
not exceed time limits set forth in the Contract Documents.

**Submittal Schedule**

Within twenty-five working days after receipt of the Notice of Intent to
Award, Contractor shall prepare and submit, in accordance with the Contract
Documents, a Submittal Schedule for City’s and the Architect’s information and
RSI Director’s approval. The Submittal Schedule shall be coordinated with
Contractor’s Construction Schedule and allow the RSI Director and the Architect
such time for review of Submittals as may be required by the Contract Documents,
or if none is required, a reasonable time for such review. Contractor shall keep the
Submittal Schedule current and updated in accordance with the requirements of the
Contract Documents.

**Submittal Time of Final Construction Schedule**

A Final Construction Schedule shall be submitted immediately after field
measurement verification. The Contractor shall allow six (6) working days for
properties receiving windows and doors only and ten (10) working days for
properties receiving full product installation on the project construction schedule for
each dwelling submitted for review by the City.

**Execution and progress.** Unless otherwise specified, the Contractor shall submit
their progress schedule for the RSI Director/Engineer’s approval within 10 days
after the effective date of the notice to proceed. The Contractor’s progress schedule,
when approved by the RSI Director/Engineer, may be used to establish major
construction operations and to check on the progress of the work. The Contractor
shall provide sufficient materials, equipment, and labor to guarantee the completion
of the project in accordance with the plans and specifications within the time set
forth in the proposal.
If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the RSI Director/Engineer’s request, submit a revised schedule for completion of the work within the contract time and modify their operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the RSI Director/Engineer at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the notice to proceed is issued by the Owner.

**Format of Final Construction Schedule**

The Construction Schedule shall be in the form of a critical path spreadsheet showing progress, in graphic form, that demonstrates a practical plan for performance of the Project Work and the Project Work for each Home within the Contract Time. The Final Construction Schedule shall be submitted both in hard copy and electronically, for City’s and the Architect’s information and RSI Director’s approval. Contractor must provide BOTH an 8.5” x 11” individual unit format as well as a large wall size format. The wall size format shall show all units from start to finish, approximately 24” X 36” or larger depending on the number of units per bid group. Print should be in an acceptable size (readable) font.

**Information to be provided in Construction Schedule**

The Construction Schedule shall include the following information:

1. The starting date and completion date of each subdivision of trade or work in the project.

2. The Contractor shall provide, in the timely and convenient fashion, all information regarding work operations, sequence of work, breakdown of the work into individual activities and time estimates for these individual activities. The schedule must also include the product delivery time period from shipping to
delivery, City RSI inspection of products, rough inspections, proposed dates for RSI
punch list/final inspection, and City Building and Safety inspections.

3. The Final Construction Schedule, in spreadsheet format for each
building, shall show the work dates across the top of the form, work tasks listed at
the left-hand margin, and the proposed length of time required for a task shown as
bar with its left-hand end below the proposed start date and the right-hand end
below the proposed end date.

4. The Final Construction Schedule shall demonstrate the order and
sequence of all significant work activities, including the interdependence between
work activities. In addition to construction activities, the schedule shall include
materials and equipment, fabrication of special materials and equipment, and
provide a schedule for submittal of samples and shop drawings for equipment and
materials.

5. The Final Construction Schedule shall reflect a continuous work
schedule; a 2-Phase construction schedule, to accommodate Mechanical work first
will NOT be approved. Work shall not be started on the project until materials for
all trades (including all long lead ordered items) are available and have been
inspected by the City or a designated representative.

6. The Final Construction Schedule shall be of a level of detail to assure
adequate planning and execution of the work and such that, in judgment of the
City, it provides an appropriate basis for acceptance of the proposed schedule for
monitoring and evaluation of the progress of the work.

7. Data furnished to the City shall be in writing and shall include a
description of the problem areas, current and anticipated delaying factors and their
impact, and the explanation of corrective action to be taken or proposed.

**Duration of Contract Schedule**

The Construction shall be complete within 93 Work Days of the date of the
Notice to Proceed. The schedule shall not exceed the 93 Work Days allowed for the
completion of the work and, if the duration is less than the 93 Work Days from the Notice to Proceed Date, the Contract time will be shortened to equal the Contractor’s schedule duration by a Change Order at no cost to the City providing the City is in agreement with the schedule. No contingency activities will be incorporated into the schedule.

Contractor Responsibility

Contractor shall remain solely responsible, notwithstanding City’s or RSI Director’s review or approval thereof, for the content, accuracy, suitability and feasibility of all elements of all Schedules it prepares for the Project, including, without limitation, the Initial and Final Construction Schedule, Submittal Schedule, other long and short term schedules, recovery schedules and any updates thereof. Data furnished to the City shall be in writing and shall include a description of the problem areas, current and anticipated delaying factors and their impact, and the explanation of corrective action to be taken or proposed.

Approval of Final Construction Schedule

The Final Construction Schedule, once approved by RSI Director, shall not be changed without the written consent of RSI Director. The governing schedule for the Work shall be the Final Construction Schedule approved by RSI Director or, if updated, the latest update to the Construction Schedule that has been approved by RSI Director. Unless otherwise directed in a writing signed by RSI Director, no other schedule shall be used or relied upon by Contractor or the Subcontractors in planning or performing the Work or in connection with any request for adjustment to the Contract Time.

Revisions to the “Final” Construction Schedule

The initial and “final” Construction Schedule shall be revised as needed in the manner required by this Section and shall be related to and consistent with City’s overall construction schedule for the entire Project. A “Final” Construction Schedule shall be submitted immediately after field measurement verification. If
the Contract Schedule indicates a work plan which will not deliver the program in accordance with the Contract time, the Contractor shall indicate methods of revising the plan by concurrency of the operations, reducing critical work spans, or a combination of both so that the schedule can reflect compliance with Contract time.

**Construction Meetings**

The Contractor is responsible for attending weekly Construction Meetings. Meeting time and location will be the decision of the City or its representatives. Contractors are required to be on time, and the project superintendents must be present and prepared. Meeting minutes will be recorded and distributed by the City or its representatives. Contractors not abiding to the schedule or the requirements of the meeting minutes may be issued a correction notice(s).

**Coordination with Others**

Contractor shall cooperate with RSI Director in scheduling and performing the Work to avoid conflict, delay in or interference with the work of the Separate Contractors or the Homeowner Contractors.

**Timeliness of Work and Materials**

Work of all trades shall be completed on each project dwelling unit within six (6) working days on properties receiving windows and doors only and ten (10) working days for properties receiving full product installation. All construction activities shall include time for inspection of materials by the City after materials are installed.

**Delays in the Construction Schedule**

The Work shall be executed with such progress as required to prevent any delay in the completion of individual buildings. If it appears that the original Construction Schedule cannot be achieved, additional corrective action shall be taken until the original schedule can be achieved or until all possible alternatives are exhausted. The City reserves the right to prevent the contractor from opening
additional dwellings if the contractor does not stay on schedule and does not make
an effort to get back on schedule. The City may allow the contractor to re-start his
schedule when he is caught up or may terminate the contractor on remaining work.

Whenever it becomes apparent that any completion dates will not be met, Contractor shall take some or all of the following action at no additional cost to the
City:

1. Increase construction manpower in such quantities and crafts as will
   substantially eliminate, in the judgment of the City, the backlog of work.

2. Increase the number of crews per workday, or the amount of
   construction equipment, or any combination of the foregoing, sufficient to
   substantially eliminate, in the judgment of the City, the backlog of work.

3. Reschedule activities to achieve maximum practical concurrency of
   accomplishment.

4. All changes in the schedule shall be submitted in writing by the
   Contractor.

The submission of an amended schedule will not relieve the Contractor of the
responsibility to notify the City in writing of all anticipated potential delays in the
prosecution of the work.

**Condition of Payment**

Compliance by Contractor with the requirements of this Article and the other
provisions of the Contract Documents pertaining to preparing, submitting, revising
and updating the Construction Schedule and Submittal Schedule is a condition
precedent to City’s obligation to make payment to Contractor. Failure by City to
assert its right to withhold payment under this Paragraph due to noncompliance by
Contractor shall not constitute a waiver of the right to withhold future payments on
account of such prior noncompliance or on account of any subsequent noncompliance
by Contractor with its schedule obligations.
Monthly progress payments may be made based on the total value of activities completed or partially completed, as determined by the City, with participation of the Contractor and based upon the approval Schedule of Values (See Article 20) and the updated progress schedule indicating progress achieved to date.

If, according to the schedule, the Contractor is 14 calendar days or more behind schedule, Contractor shall be responsible to submit a revised schedule which indicates methods of reducing the network plan by concurrency of operations, increased manpower, reducing critical work spans or a combination of both so that the Contractor's schedule reflects compliance with the Contract time. The Contractor's efforts to comply with the Contract time shall be at his own expense. At the City's option, progress payments may be withheld until an acceptable revised schedule is submitted by the Contractor and reviewed by the City.

**Partial payments.** Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RSI Director/Engineer, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with the subsection 90-07 titled PAYMENT FOR MATERIALS ON HAND of this section. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RSI Director/Engineer to be a part of the final quantity for the item of work in question.
No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection 90-09 titled ACCEPTANCE AND FINAL PAYMENT of this section.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

Article 20 – SCHEDULE OF VALUES

1. Requirements included

1.1 Submit to the City a Schedule of Values for each individual Project Dwelling Unit allocated to the various portions of the work, at the Initial Pre-Construction Meeting. See below for the form requirements.

1.2 Upon request of the City or its representatives, the Contractor will provide backup, including subcontracts, to substantiate the Schedule of Values.

1.3 The Schedule of Values will be used as the basis for the Contractor’s Application for Payment and for evaluating Change Order costs.

2. Form and Content of Schedule of Values
2.1 Prepare schedule on original AIA Document G702 & G703, Application and Certificate for Payment Continuation Sheet. No other forms will be accepted. Identify schedule with:

A. Title project and location.
B. Architect and project number.
C. Name and address of Contractor.
D. Contract designation.

Date of submission.

2.2 Schedule shall list the installed value of the component parts of the work for each individual Project Dwelling Unit. Schedule shall include pricing for the following separate major components (that are numbered below), and sub-components for which pricing must also be provided (that are sub-categorized below):

HAZMAT Abatement

Windows
  a. Window Coverings Work
  b. Stucco Patches
  c. Security Bars
  d. Alarm Work

Doors
  a. Prime “Acoustically Rated” doors
  b. Acoustic Security/Storm doors
  c. Storm/Secondary doors
  d. Security doors
  e. Sliding glass doors
  f. Exterior stucco, brick, river-rock or other surface modifications for new frame and storm door installations.
  g. Alarm Work

Roofs
  Roof patches
Carpentry
   a. Crawl Space Cover(s)
   b. Attic Access Panels (Enlarging or New)
   c. Carpentry
      (1) Floor patches
      (2) Wall Patches
      (3) Additional Ceiling Work

Concrete Work
   Cast-in-place Concrete
   Bollards
   Stucco

Insulation

Mechanical
   a. Structural Engineering (if required)
   b. Thermostat, wiring
   c. Registers
   d. Soffits and Chases
   e. Ladders/access Work

Electrical
   a. Verify attic wiring
   b. Panel Upgrade
   c. AC hook-up

Painting and Finish Work
   a. Prime Doors
   b. Wall Patches

Hardware
   a. Door Hardware

Miscellaneous

Overhead Costs
   a. Bond
   b. Insurance

Mobilization/De-Mobilization (Maximum 3% of Total Bid)

2.3 Contractors must also provide backup documents showing the value of vinyl windows, primary doors, secondary doors, and sliding glass doors separately and NOT as a package cost.

2.4 Approved contract time extensions shall add to Mobilization Costs as a percentage of the total project Mobilization Cost. Time Extensions for individual dwelling construction are not eligible for increased Mobilization costs.
2.5 For each item listed in the Schedules of Values, values shall be broken
down by:

1. Materials cost (includes taxes paid, delivery, storage, etc.)
2. Installation Cost (Labor, Based on required Prevailing Wage
   Rates)
3. Overheads and Bond
4. Profit
5. The Total Installed Value

2.6 The sum of all values listed in the Schedule of Values shall
   equal the total Contract sum.

**Article 21 – PROJECT RECORD DOCUMENTS**

The Contractor shall provide Project Records Documents ("As-Built") to the
City at the completion of the work.

The Project Record Documents will consist of Drawings and Specifications
which have been revised by the Contractor to show changes made during
construction and shall accurately represent the actual construction performed.

The City will provide the Contractor with a set of Drawings and
Specifications suitable for the purpose.

1. During the course of construction, the Contractor shall clearly and
   accurately record changes due to addenda, change orders, substitutions, shop
drawings, or other such authorizations.

2. Where the Drawings and Specifications are not of sufficient size and
detail to show a change, the Contractor shall furnish additional drawings, details,
manufacturer's data, or other information to produce an accurate record of the
actual construction.

**Final payment will not be made until acceptable Project Record Documents
have been submitted.**
Article 22 – CHANGES IN THE WORK

General

All administrative aspects involving change orders shall be authorized by the RSI Director or designee. Changes in the Work, whether ordered by City or otherwise arising, are permitted, reasonably foreseeable and, regardless of their number, size, scope or complexity, shall not invalidate the Construction Contract or give rise to any right on the part of Contractor to seek recovery of any Loss from City other than pursuant to the contractual processes for adjustment of Contract Sum and Contract Time that are expressly provided for by the Contract Documents.

Contract Adjustments

Adjustments to the Contract Sum or Contract Time shall only be permitted as follows: (1) The Contract Sum shall only be adjusted pursuant to this Article by means of a Change Order or Unilateral Change Order for Compensable Change, Deleted Work or Compensable Delay; and (2) the Contract Time shall only be adjusted for pursuant to this Article by means of a Change Order or Unilateral Change Order for Compensable Delay, Excusable Delay or Deleted Work, authorizing an extension or contraction of the Contract Time as provided in Article 23, below.

Compensation for altered quantities. When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in the subsection 40-02 titled ALTERATION OF WORK AND QUANTITIES of Section 40 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from his or her unbalanced allocation of overhead and profit among the contract items, or from any other cause.
Contractors Own Expense

Without Limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at Contractor’s Own Expense, any Change performed by Contractor pursuant to any direction other than a duly authorized and executed Change Order, Unilateral Change Order or Field Order shall be deemed performed at Contractor’s Own Expense.

Prompt Performance

Subject to the procedures set forth this Article 22 and elsewhere in the Contract Documents, all Changes shall be performed promptly and without Delay.

Payment for extra work. Extra work, performed in accordance with the subsection 40-04 titled EXTRA WORK of Section 40, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

Change Order Defined

A Change Order is a written instrument as defined in Article 2 of this Agreement.

Change Order Request

With respect to any matter that Contractor believes may involve or require an adjustment to the Contract Sum due to Compensable Change, Contractor shall, within forty-eight (48) Hours after the Discovery Date of the circumstances giving rise to the Compensable Change, submit to RSI Director a Change Order Request. With respect to Deleted Work, Contractor shall submit a Change Order Request no later than forty-eight (48) Hours after receipt of a request for pricing of such Deleted Work.

Form

Change Order Request shall be provided using forms furnished by City. Failure by City to provide or approve a particular form, however, shall not relieve
Contractor or its obligation to provide Change Order Request in written form that
complies with Content Requirements set forth below.

**Content Requirements**

Each Change Order Request shall include:

1. A detailed description of the circumstances for the Compensable
   Change, Deleted Work or Compensable Delay and a detailed estimate, which in the
   case of a Compensable Change shall be based on definitive Subcontractor pricing
   where available, of the proposed adjustment of the Contract Sum.

2. A complete, itemized cost breakdown of all Contractor and
   Subcontractor costs, quantifies, hours, unit prices, rates and markups (additive and
   deductive); provided, however, that, unless otherwise agreed to by City in writing,
   under no circumstances shall any Change Order Request include or be based upon
   any costs, expenses or markups (on behalf of Contractor or any Subcontractor) other
   than either: (1) a unit price set forth in the Construction Contract, or (2) Allowable
   Costs and Allowable Markups. If the Change Order Request involves the
   performance of Work by the Subcontractor, Contractor must include an estimate or
   bid from the Subcontractor containing the same detailed information as required
   herein of Contractor; and

3. If such circumstances involve a right to adjustment of the Contract
   Time due to Compensable Delay or Excusable Delay that has not been waived,
   Contractor shall include, if not previously provided, a complete and timely Request
   for Extension.

**Waiver by Contractor**

Failure by Contractor to provide a timely and complete Change Order
Request under circumstances where a Change Order Request is required by this
Section shall constitute a waiver by Contractor of the right to any adjustment to the
Contractor Sum on account of such circumstances.
Alteration of work and quantities. The Owner reserves and shall have the right to make such alterations in the work as may be necessary or desirable to complete the work originally intended in an acceptable manner. Unless otherwise specified herein, the RSI Director/Engineer shall be and is hereby authorized to make such alterations in the work as may increase or decrease the originally awarded contract quantities, provided that the aggregate of such alterations does not change the total contract cost or the total cost of any major contract item by more than 25% (total cost being based on the unit prices and estimated quantities in the awarded contract). Alterations that do not exceed the 25% limitation shall not invalidate the contract nor release the surety, and the Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original contract.

These alterations that are for work within the general scope of the contract shall be covered by “Change Orders” issued by the RSI Director/Engineer. Change orders for altered work shall include extensions of contract time where, in the RSI Director/Engineer’s opinion, such extensions are commensurate with the amount and difficulty of added work.

Should the aggregate amount of altered work exceed the 25% limitation hereinbefore specified, such excess altered work shall be covered by supplemental agreement. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the Owner reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

Supplemental agreements shall be approved by the FAA and shall include all applicable Federal contract provisions for procurement and contracting required under AIP. Supplemental agreements shall also require consent of the Contractor’s surety and separate performance and payment bonds.

Unilateral Change Orders
If, after receipt by City of a Change Order Request properly prepared and submitted by Contractor, the parties are unable to agree upon the amount of any adjustment to the Contract Sum or Contract Time to be included in a Change Order or if the amount of such adjustment after performance is otherwise disputed, then City may, in its sole discretion, issue a Unilateral Change Order setting forth its unilateral determination of the appropriate adjustment to the Contract Sum or Contract Time. City's Determination in a Unilateral Change Order shall be based upon City's good faith estimate of an appropriate and reasonable adjustment to the Contract Sum and Contract Time. City's Unilateral determination of an adjustment to the Contract Sum or Contract Time shall become final and binding upon Contractor if Contractor fails to submit a Claim in writing to City disputing the terms of such Unilateral Change Order within thirty (30) Days of the issuance of the Unilateral Change Order.

Acceptance and final payment. When the contract work has been accepted in accordance with the requirements of the subsection 50-15 titled FINAL ACCEPTANCE of Section 50, the RSI Director/Engineer will prepare the final estimate of the items of work actually performed. The Contractor shall approve the RSI Director/Engineer's final estimate or advice the RSI Director/Engineer of the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the RSI Director/Engineer shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the RSI Director/Engineer's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the RSI Director/Engineer's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with
the subsection 50-16 titled CLAIMS FOR ADJUSTMENT AND DISPUTES of Section 50.

After the Contractor has approved, or approved under protest, the RSI Director/Engineer’s final estimate, and after the RSI Director/Engineer’s receipt of the project closeout documentation required in subsection 90-11 Project Closeout, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of the subsection 50-16 titled CLAIMS FOR ADJUSTMENTS AND DISPUTES of Section 50 or under the provisions of this subsection, such claims will be considered by the Owner in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

Field Orders Defined

A Field Order is a written directive as defined in Article 2 of this Agreement.

Adjustment Estimate

Each Field Order involving a Compensable Change or Deleted Work shall include an estimate prepared by Contractor of the probable amount of the adjustment to the Contract Sum and Contract Time based on Allowable Costs and Allowable Markups.

Authorization

A Field Order confers no rights upon Contractor for adjustments of the Contract Sum or Contract Time unless it is signed by RSI Director. A Field Order for a Minor Change or for the performance of Work that is not a Change to the Work
and therefore does not involve an adjustment to the Contract Sum or Contract Time may be authorized by either RSI Director or Architect.

**Disputed Work**

In the event there arises a dispute over whether Work directed to be performed by Field Orders constitutes a Compensable Change, Contractor shall, if requested in a Field Order signed by the RSI Director, nonetheless proceed with performance of the Work (including, without limitation any Change) as directed by such Field Order.

**Extra work.** Should acceptable completion of the contract require the Contractor to perform an item of work for which no basis of payment has been provided in the original contract or previously issued change orders or supplemental agreements, the same shall be called “Extra Work.” Extra Work that is within the general scope of the contract shall be covered by written change order. Change orders for such Extra Work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the contract time that, in the RSI Director's/Engineer's opinion, is necessary for completion of such Extra Work.

If Contractor contends that such disputed work is an extra, then Contractor shall proceed as otherwise required by the Contract Document requirements set forth elsewhere herein. At a minimum, Contractor shall keep daily time and material records for all such disputed work and turn same into the Inspector at the end of each day that any such work takes place on. The time and material records must specifically identify the names of the workmen performing such work, specifically describe the type of work each man/woman was doing and the respective durations thereof. The time and material cards must also specifically identify all equipment, materials, apparatus or the like that the Contractor contends went into the work of improvement that day. Any and all other cost items that Contractor
contends are associated with such disputed work must also be set forth on the time and material cards.

Failure to include any items on the time and material cards, or the failure to submit time and material cards daily for such disputed work shall be an absolute admission and waiver by Contractor that he/she has incurred no extra costs and shall seek no extra costs or time from the City.

When determined by the RSI Director/Engineer to be in the Owner's best interest, the RSI Director/Engineer may order the Contractor to proceed with Extra Work as provided in the subsection 90-05 titled PAYMENT FOR EXTRA WORK of Section 90. Extra Work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original contract shall be covered by a Supplemental Agreement as defined in the subsection 10-48 titled SUPPLEMENTAL AGREEMENT of Section 10.

Any claim for payment of Extra Work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the Owner.

No Implied Obligation

In recognition of the fact that Field Orders may be issued under circumstances in which the City may not have had the time and opportunity to fully evaluate the circumstances giving rise to a Change, it is agreed that neither the issuance nor execution of, nor any statement contained in, nor any course of conduct in connection with, a Field Order shall be interpreted as creating or implying on the part of City to increase the Contract Sum or extend the Contract Time on account of any Change described in the Field Order that upon further investigation is found in fact to not constitute a valid basis for adjustment of the Contract Sum or Contract Time.
Waiver by Contractor

The following shall be deemed performed by Contractor at Contractor's Own Expense: (1) any Changes or Extra Work performed by Contractor, before or after issuance by Contractor of a Change Order Request, without Contractor having first obtained a Field Order that has been duly authorized directing such performance to proceed; and (2) any Changes or Extra Work performed in response to a directive set forth in a Field Order prior to the receipt by RSI Director of a Change Order Request in accordance with the appropriate Change Order requirements of this Section.

Additional Work

Additional work requested by the Building Owner or occupant shall not be performed without written permission from the City or its designated representative. Such requests may be approved if the additional work will not delay progress of the project or cause additional project cost.

Written Authorization of Essence

It is the essence to this agreement between Contractor and City that all adjustments to the Contract Sum or Contract Time must be authorized in advance, in writing, before the additional work is performed. Approval will be contingent upon cost data submittal. Any additional days needed to complete change order work will NOT be approved up-front. The City or its designated representative will assess the need for additional days at the end of the contract. Contractors must make a good faith effort to include change order work in the original construction schedule (with in 10 days per unit). Accordingly, no verbal directions, course of conduct between the parties, or express or implied acceptance of changes or of the work, and no claim that City has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for an adjustment to the contract sum or contract time if contractor has not obtained advance written authorization in the manner required by this Article 22.
Formal Notice of Essence

Contractor recognizes and acknowledges that timely submission of a formal Change Order Request, whether or not the circumstances of the Change may be known to City or RSI Director or available to City through other means, is not a mere formality but is of crucial importance to the ability of City to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes) that does not strictly comply with the formal requirements of this Article 22 shall accordingly be deemed insufficient.

Allowable Costs

The term "Allowable Costs" means, and is limited to, the costs set forth in this paragraph and that are not prohibited under the next succeeding paragraph. Allowable costs are as follows: (1) labor and benefits – straight-time wages, salaries, benefits, and overtime wages, salaries and benefits specifically authorized by City or RSI Director in writing, for employees employed at a site in the direct performance of the Extra Work or that would have been incurred in the direct performance of the Deleted Works; (2) materials and consumable items (and sales taxes derived thereof) furnished or incorporated in the work at the lowest competitive price available to Contractor in the general vicinity of the site; (3) reasonable rental charges for necessary machinery and equipment as authorized by City or RSI Director, exclusive of hand tools; (4) additional or saved costs of permits, and additional or saved costs of insurance or bond premiums;

Costs not Allowed

Allowable costs shall not include any of the following: (1) additional costs for labor, salaries or benefits incurred by such positions as superintendents, assistant superintendents, project directors, project managers, schedulers, or estimators; (2) drafting or detailing, (3) vehicles not dedicated solely to the performance of the
Work, (4) small tools with a replacement value not exceeding One Hundred Dollars ($100); (5) office expenses, including staff, materials and supplies, (6) on-site and off-site trailer and storage rental and expenses; (7) site fencing not added solely due to the performance of Extra Work; (8) utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment; (9) computer and data-processing personnel, equipment and software; (10) federal, state or local business income and franchise taxes, (11) costs (other than liquidated damages for Compensable Delay permitted by Article 13 of this Contract arising from or related to Delay or acceleration to overcome Delay, whether incurred by Contractor or the Subcontractor, of any Tier; and (12) costs and expenses of any kind or item not specifically included in the Allowable Costs set forth above.

**Allowable Markups**

Allowable markups consists of a reasonable percentage of the Contract Sum based upon the Change of Work to cover the following: (1) direct and indirect overhead, consumables, small tools, cleanup and profit of Contractor, (2) direct and indirect overhead, consumables, small tools, cleanup and profit of the Subcontractor, of every Tier, and (3) all costs that are not reimbursable to Contractor under Costs Not Allowed set forth above. – lump sum/unit price

**Final Payment**

No claim by Contractor for adjustment to the Contract Sum relating to any Project Work for a Home shall be allowed if asserted after Residence Final Payment for such Project Work has been made by City.

**Continuous Performance**

No dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Contractor’s right to or the amount of any adjustment to the Contract Sum or Contract Time, shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous,
expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

**Article 23 – CONTRACT TIME AND DELAYS**

Except as set forth in this Article 23 or otherwise in the Contract Documents, the Contractor shall complete the work within the time specified in the proposal beginning with the date of the Notice to Proceed.

**Commencement**

The Date of Commencement shall not be postponed by the failure to act of Contractor or of persons or entities for whom Contractor is responsible. Contractor shall not knowingly, except by agreement or instruction of City in writing, prematurely commence operations on a Site or elsewhere prior to the effective date of insurance required by Article 10 of this Agreement to be furnished by Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

**Contract Time**

Contractor shall proceed expeditiously with adequate forces and shall perform the Work within the Contract Time, as adjusted for extensions of time duly permitted, authorized and noticed pursuant to the provisions of this Article 23.

**Adjustments in Contract Time**

Subject to the limitations set forth in this Article 23 and elsewhere in the Contract Documents, the Contract Time shall be extended for Compensable Delays and Excusable Delays and shall be contracted for Changes involving Deleted Work.

**Early Completion**

Nothing stated in these General Conditions or elsewhere in the Contract Documents shall be interpreted as creating any contractual right, express or implied, on the part of Contractor to complete the Work earlier than the Contract Time. Contractor has included in its Contract Sum the costs of all Contractor’s and Subcontractor’s direct and indirect overhead, including but not limited to all Project
staff, temporary facilities, temporary utilities and home office overhead for the entire duration of the Contract Time. The above costs have been included in the Contract Sum notwithstanding Contractor's possible anticipation of completion in fewer Days than established by the Contract Time. Under no circumstances shall City be liable to Contractor for any Losses, of any kind, due to the inability of Contractor to complete Work earlier than the Contract Time, regardless of the cause, including, without limitation, Delays due to acts or omissions (intentional or negligent) of City, Architect, RSI Director, City Consultant or others. No reduction in the Contract Sum shall be made nor will Contractor be required to remain on a Site if the Project Work Site if Finally Completed before expiration of the Contract Time.

**Delays and Extensions of Time**

Provided that Contractor has complied with the provisions of this Article 23, including without limitation, the requirements pertaining to timely delivery of a complete Request for Extension, if Contractor is delayed by an Excusable Delay or Compensable Delay to the path(s) of activities critical to performance of the Work by one or more of the deadlines comprising the Contract Time, then the applicable deadline in the Contract Time shall be changed either by Change Order or Unilateral Change Order, for such reasonable time as RSI Director may determine. The Contract shall not be adjusted for Unexcused Delays.

**Request for Extension**

1. *Submission.* With respect to any matter that Contractor believes may involve or require an adjustment extending or contracting the Contract Time, Contractor shall within the earlier of: (1) 48 hours after the Discovery Date of the circumstances causing a Compensable or Excusable Delay; or (2) in the case of a Delay caused by Compensable Change, within the period of time set forth in Article 22 for submission of Change Order Requests, submit to RSI Director a written Request for Extension.
2. **Form.** Request for Extension shall be provided using forms furnished by RSI Director. However, failure by RSI Director to provide a particular form shall not relieve Contractor of its obligation to provide Request for Extension in a written form that complies with the requirements set forth below.

3. **Content.** Each Request for Extension in order to be considered complete shall include: (1) a detailed description of the circumstances for the Compensable Delay and Excusable Delay; and (2) if such circumstances involve a right to an adjustment of the Contract Sum for Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Change Order Request.

4. **Waiver by Contractor.** Failure by Contractor to provide a timely and complete request for extension in accordance with this section under circumstances where a Request for Extension is required by this paragraph shall constitute a waiver by Contractor of the right to any adjustment in the Contract Time or Contract Sum on account of such circumstances.

5. **Response by City.** RSI Director shall thereafter investigate the facts concerning the cause and extent of such delay and, depending on whether the Request for Extension is justified, will notify Contractor of its approval or disapproval of all or a portion of Contractor’s request. Extensions of time approved by RSI Director shall apply only to that portion of the Work affected by the Delay, and shall not apply to other portions of Work not affected.

6. **Formal Notice of Essence.** Contractor recognizes and acknowledges that time submission of formal Request for Extension, whether or not circumstances of a Delay may be known to City or RSI Director or available through other means, is not a mere formality but is of crucial importance to the ability of City to promptly identify, prioritize, evaluate and mitigate the potential effects of Delay. Any form of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries on monthly reports, daily logs or job
meetings), that does not strictly comply with the formal notice requirements set forth above, shall accordingly be deemed insufficient.

Claims for adjustment and disputes. If for any reason the Contractor deems that additional compensation is due for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the RSI Director/Engineer in writing of his or her intention to claim such additional compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given or the RSI Director/Engineer is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the RSI Director/Engineer has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit a written claim to the RSI Director/Engineer who will present it to the Owner for consideration in accordance with local laws or ordinances.

Nothing in this subsection shall be construed as a waiver of the Contractor’s right to dispute final payment based on differences in measurements or computations.

Compensation for Delay

1. Compensable Delay. Contractor agrees to accept compensation based upon a reasonable calculation of the City for Compensable Delay in lieu of any other right that may exist under Applicable Law or in equity for recovery of Losses, whether incurred by Contractor or the Subcontractors of any Tier, due to Delay, including, without limitation, the following: extended or extraordinary (direct and indirect) overhead; lost of productivity; labor, wage and material costs escalators; inefficiency; direct and indirect costs associated with the cumulative impact of
multiple Changes or Delays; legal expenses; consultant costs; interest; lost profits or revenue; bond and insurance costs; and changes in taxes.

2. **Deleted Work.** Adjustments reducing the Contract Sum for contractions of the Contract Time due to Deleted Work shall be based, without duplication to any other adjustments to the Contract Sum, upon a reasonable calculation of the City for such delay.

**Acceleration of the Work**

1. **Due to Unexcused Delay.** If RSI Director determines that due to Unexcused Delay Contractor will not perform the Work within the Contract Time, then Contractor shall immediately take, at Contractor's Own Expense, all measures necessary to accelerate performance.

2. **Due to Excusable Delay.** Acceleration, whether performed at the request of City or otherwise, to overcome Excusable Delay shall be deemed a voluntary acceleration performed at Contractor's Own Expense.

3. **Due to Compensable Delay.** City shall have the right, exercised in its sole discretion, in lieu of granting an adjustment to the Contract Time and Contract Sum for Compensable Delay to direct in writing the acceleration of the Work by Contractor in order to recapture time lost due to Compensable Delay. Any adjustment in the Contract Sum on account of such shall be limited to costs incurred and paid for the premium time portion of overtime only.

**Concurrent Delays**

Contractor's right to adjustment to the Contract Time for Excusable Delay and its right to adjustment to the Contract Sum and Contract Time for Compensable Delay shall, in case of concurrency of Delays, be calculated as follows:
1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first Delay to the cessation of the Delay which ends lasts.

2. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay or Compensable Delay exceeds the number of Days of such Unexcused Delay.

3. If an Unexcused Delay occurs concurrently with both Excusable Delay and Compensable Delay, the maximum extension of the Contract Time shall be the number of days if any, by which such Excusable Delay and Compensable Delay exceeds the number of Days of such Unexcused Delays.

**Delay Claims**

Claims relating to disputed adjustments of the Contract Time or adjustments to the Contract Sum to Delay shall be made in accordance with applicable provisions of this Article, above.

**Exercise of City Rights**

Notwithstanding any other provisions of the Contract Documents to the contrary, any Delay to Contractor's performance of the Work that is the result of City's exercise of its rights or remedies under the Contract Documents or Applicable Laws in response to a failure by Contractor or any Subcontractor to comply with the Contract Documents shall be deemed an Unexcused Delay and shall not, under any circumstances, entitle Contractor to an adjustment to the Contract Time or Contract Sum.

**City-Furnished Information**

Information included as part of the Contract Documents and furnished by City's equipment vendors including the expected shipping dates, weights, handling instructions, erection information and all other such data is furnished in good faith, but no warranty of accuracy, sufficiency or completeness is given or implied.
Article 24 – CITY’S RIGHT TO CORRECT OR STOP WORK

Correction of the Work by Contractor

Contractor shall promptly correct Defective Work, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. All such Defective Work shall be either: (1) removed, remade and replaced, and all the Work disturbed thereby shall be made good at Contractor’s Own Expense; or (2) City may exercise its option to accept such work and adjust the Contract Sum.

City’s Right to Stop the Work

If Contractor fails to correct Defective Work, fails to perform the Work in accordance with the Contract Documents or violates any Applicable Law, City may, without limitation to City’s other rights immediately direct Contractor to stop the Work, or any portion thereof, until the cause for such directive has been eliminated by Contractor. Contractor shall immediately comply with such directive and not be entitled to any adjustment in Contract Time or Contract Sum as a result of any such directive. City shall have no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

Removal of unacceptable and unauthorized work. All work that does not conform to the requirements of the contract, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the RSI Director/Engineer as provided in the subsection 50-02 titled CONFORMITY WITH PLANS AND SPECIFICATIONS of this section.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of the subsection 70-14 titled CONTRACTOR’S RESPONSIBILITY FOR WORK of Section 70.
No removal work made under provision of this subsection shall be done without lines and grades having been established by the RSI Director/Engineer. Work done contrary to the instructions of the RSI Director/Engineer, work done beyond the lines shown on the plans or as established by the RSI Director/Engineer, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply with any order of the RSI Director/Engineer made under the provisions of this subsection, the RSI Director/Engineer will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs incurred by the Owner from any monies due or to become due the Contractor.

**Article 25 – CITY’S RIGHT TO PERFORM ITS OWN WORK**

Without limitation to City’s other rights, if Contractor fails to perform the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Contract Schedule, or otherwise fails to comply with any requirements of the Contract Documents, and fails to cure such failure in the manner required in the Contract Documents, City may, without prejudice to other remedies City have, correct such failure by performing the work itself or having the work performed by others on its behalf. In such case, City shall be entitled to recover from Contractor or deduct from payments then or thereafter due Contractor the cost of correcting such failure, including compensation for the additional services and expenses of RSI Director, Architect, Inspector of Record, City Consultant or others to whom City may be liable, made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall promptly pay the additional amount to City.
Article 26 – CONTIGUOUS WORK

If any part of the work under this contract depends for proper execution or result upon any other contiguous work, the Contractor shall inspect such work and promptly report to the RSI Director any condition which may adversely affect the work under this contract. The Contractor’s failure to inspect and report same shall constitute an acceptance of said other contiguous work as fit and proper for the reception of the work under this contract, except as to deficiencies which may develop in said other work after the execution of the work covered under this contract.

Cooperation of Contractor. The Contractor will be supplied with copies each of the plans and specifications. The Contractor shall have available on the work at all times one copy each of the plans and specifications. Additional copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the work to facilitate the progress thereof, and shall cooperate with the RSI Director/Engineer and his or her inspectors and with other contractors in every way possible. The Contractor shall have a competent superintendent on the work at all times who is fully authorized as his or her agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the RSI Director/Engineer or his or her authorized representative.

Cooperation between contractors. The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct the work so as not to interfere with or hinder the progress of completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with his or her contract and shall protect and save harmless the Owner
from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced because of the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange his or her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. The Contractor shall join his or her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

**Article 27 – ADDITIONAL CITY WORK AND WORK DONE BY OTHERS.**

The City reserves the right to do additional City work and to let other contracts for work contiguous to the work set forth in the Contract Documents. In the event that work is done by the City or by other contractors contiguous to the work covered by this contract, the respective rights of the various interest involved shall be established by the RSI Director. The Contractor shall afford the City and other contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work, and shall properly conduct and coordinate work with all other parties.

**Article 28 – COMPLETION, CLOSE-OUT AND ACCEPTANCE OF WORK**

**Close-out Requirements Included**

Contractor shall comply with requirements stated in Conditions of the Contract.

**Final Inspection**

It shall be within the area of responsibility of the RSI Director or his designee to make the final inspection of the work and to accept the completed work on behalf of the City.

1. When Contractor considers the work is complete and all items per contract documents have been installed, Contractor shall submit to the City a
written notice that the Work, or designated portion thereof for a project building, is complete and ready for "punch" inspection.

2. Within five (5) working days after receipt of such notice, the City will make an inspection to determine the status of completion.

3. Should the City determine that the work is not complete:
   a. The City will notify the Contractor in writing, giving reasons thereof.
   b. Contractor shall remedy the deficiencies in the Work, and send a second written notice of completion to the City.
   c. The City will reinspect the work.

**Contractor's Close-Out Submittals and Requirements**

1. Printed Operating and Maintenance Data, Instructions and Warranties to the City including those for:
   a. Window and sliding glass doors
   b. New Doors
   c. Air conditioning
   d. Air conditioning (service of existing)

   All documents should be packaged in a per unit basis. Documents should be specific to each unit and should include literature addressing only those items installed at that particular address.

2. Bonds, including the guaranty bond.

3. Evidence of Payment and Release of Liens.

4. List of subcontractors, service organizations, and principal vendors, including names, addresses, and telephone numbers where they can be reached for emergency service at all times including nights, weekends, and holidays.

5. As-build drawings for the dwelling and the AC system.

6. Copy of building permits with complete signatures.

7. HAZMAT manifests.
Final Adjustment of Accounts

1. Submit final statements of accounting to the Contract Sum.
2. Statement shall reflect all adjustments resulting from:
   a. The original Contract Sum.
   b. Additions and deductions resulting from:
      (1) Previous Change Orders
      (2) Unit Prices
      (3) Deductions for uncorrected work
      (4) Penalties
      (5) Deductions for Liquidated Damages
      (6) Deductions for Reinspected Payments
      (7) Other adjustments
   c. Total Contract Sum, as adjusted.
   d. Previous payments.
   f. Sum remaining due.

Notice of Completion

The City of Inglewood will prepare and file the Notice of Completion.

Final Application for Payment

Contractor shall submit the final Application for Payment in accordance with procedures and requirements stated in the Conditions of the Contract.

Article 29 – GUARANTEE OF WORK

All work shall be guaranteed one year for defective materials and workmanship, commencing at final acceptance. Work found to be defective or not in accordance with the contract documents shall be corrected by the Contractor promptly after receipt of a written notice from the City.
If the Contractor fails to make such repairs or replacements promptly, the
City reserves the right to do the work and the Contractor and Surety Company
shall be liable to the City for the cost thereof.

Article 30—REQUESTS FOR PAYMENT

City Retention of 5%

The City shall retain 5% of the Contract Sum until final completion of the
project as defined below.

The Contractor is required to pay all subcontractors for satisfactory
performance of their contracts no later than 30 days after the Contractor has
received partial payment. The Owner must ensure prompt and full payment of
retainage from the prime Contractor to the subcontractor within 30 days after the
subcontractor's work is satisfactorily completed. A subcontractor's work is
satisfactorily completed when all the tasks called for in the subcontract have been
accomplished and documented as required by Owner. When the Owner has made an
incremental acceptance of a portion of a prime contract, the work of a subcontractor
covered by that acceptance is deemed to be satisfactorily completed.

From the total of the amount determined to be payable on a partial payment,
5 percent not to exceed 10 percent of such total amount will be deducted and
retained by the Owner until the final payment is made, except and may be provided
(at the Contractor's option) in the subsection 90-08 titled PAYMENT OF
WITHHELD FUNDS of this section. The balance due of the amount payable, less
all previous payments, shall be certified for payment. Should the Contractor
exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF
WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the RSI
Director/Engineer shall at the Owner’s discretion and with the consent of the
surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

**Securities in Lieu of Retention**

Provisions of California Public Contract Code Section 22300 et. seq. substitution of eligible and equivalent securities for retention held by City to ensure Contractors performance under the Contract will be permitted at the request and expense of the Contractor and in conformity with California Section 22300. The foregoing notwithstanding, the Contractor shall have ten (10) days following action by the City to award the Agreement to the Contractor to submit its written request to the City to permit the substitution of securities for retention under California Public Contract Code Section 22300/ The failure of such Contractor to make such a written request for the City within said ten (10) day period shall be deemed a waiver of the Contractor’s right under California Public Contract Code Section 22300.

In the event the Contractor wishes to choose to exercise its rights under California Public Contract Code Section 22300, the Contractor shall enter into an escrow agreement with the City, and the escrow agent, a state or federally chartered bank in California with a current A.M. Best Rating of not less than “A,” in the form specified by said Section 22300. Contractor shall have the obligation of ensuring that such securities deposited are sufficient to maintain it total fair market value an amount equal to the cash amount of the sums to be withheld under the Agreement. If upon written notice from the City or from the appropriate escrow agent, indicating that the fair market value of the securities has dropped below the dollar amount of monies to be withheld by the City to ensure performance,
Contractor shall, within five (5) days of the date of such notice, post additional securities as necessary to ensure that the total fair market value of all such securities held by the City, or in escrow, is equivalent to the amount of money to be withheld by the City under the Agreement.

Schedule of Values

The Schedule of Values, unless objected to by RSI Director, shall be used as a basis for reviewing Contractor's Application for Payments.

Application for Progress Payment

On the tenth (10th) Day of each month, Contractor shall submit an Application for Progress Payment with the RSI Director using such forms as required by RSI Director, indicating the percentage of work completed and detailing the work performed. RSI Director shall promptly review said application and if no inaccuracy is discovered he shall submit the Application to the City for prompt payment.

Decisions to Withhold Progress Payments

The RSI Director may withhold or nullify the requested Progress Payments in whole or in part because of any of the circumstances listed below:

1. Defective work not remedied in accordance with provisions of the Contract Documents;

2. Third party claims, liens or stop notices filed or reasonable evidence indicating probable filing of such claims, liens or stop notices;

3. Failure of the Contractor to make payments properly for labor, services, materials, equipment, or other facilities or to subcontractor;

4. A reasonable doubt that the work can be completed for the then unpaid balance of the Contract Sum;

5. A reasonable doubt that the Contractor will complete the work within the agreed Contract Time;
6. Costs to the Owner resulting from failure of the Contractor to complete the work within the stipulated time, or in accordance with the terms of the contract;

7. Damage to other work or property;

8. Failure to fulfill all the requirements of the Contract Documents;

9. When there is pending litigation against the City related to this contract or reasonable anticipation thereof;

10. Failure of the contractor to maintain all records as required; to submit progress schedules, weekly payroll records, minority enterprise utilization reports and forms and any other such item required by these specifications;

11. Failure to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by this contract, after written notice to the contractor.

12. Failure of Contractor of the subcontractors to comply with applicable laws;

13. Any reason specified elsewhere in the Contract Documents as grounds for a withholding, offset or setoff or that would legally entitle City to a setoff or recoupment;

14. Additional professional, consultant or inspection services required due to Contractor’s failure to comply with Contract Documents;

15. Liquidated damages payable to City;

16. Materials ordered or paid by City on behalf of Contractor;

17. Damage loss caused to City, a separate contractor, homeowner contractor or any other person or entity due to the actions of the Contractor;

18. Cleanup performed by City and chargeable to Contractor;

19. Failure of Contractor to pay contributions due and owing to employee benefits funds pursuant to applicable collective bargaining agreements or trust agreements; and Federal Prevailing Wages.
20. Failure of Contractor or any Subcontractor to properly pay prevailing wages as defined in California Labor Code Section 1720 et seq.;


Whenever the City shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefore shall be given the Contractor, and, when the Contractor shall remove the grounds for such withholding, the City will pay to the Contractor, within 35 calendar days, the amount so withheld.

**Application of Withholding**

Sums properly withheld in good faith may be used by City without a prior judicial determination of City's actual rights with respect to recovery of any Loss on which such withholding is based. Contractor agrees and hereby designates City as its agent in for such purposes, and agrees that such payments shall be considered as payments made under the Construction Contract by City to Contractor. City shall submit to Contractor and accounting of such funds disbursed on behalf of Contractor. As an alternative to such payment, City may, in its sole discretion, elect to exercise its rights to adjust the Contract Sum.

**Payment by City**

After an Application for Progress Payment has been made, the City shall make payment in a timely manner unless there is a good faith reason for withholding the payments in accordance with the provisions of the Contract Documents or Applicable Law.

**Payment to Subcontractors**

Upon receipt of payment from City, Contractor shall pay the Subcontractors performing the Work, out of the amount paid to Contractor on account of such Subcontractor's portion of the work, the amount of which said Subcontractor is entitled in accordance with the terms of its contract with Contractor and Applicable
Laws, including, without limitation, California Public Contract Code Section 7107. Contractor shall remain responsible, notwithstanding a withholding by City pursuant to the terms of these General Conditions, to promptly satisfy from its own funds sums due to all Subcontractors who have performed the Work that is included in Contractor’s Application for Payment. Contractor shall, by appropriate agreement, require each Subcontractor to make payments to its sub-contractors and suppliers in similar manner. City shall have no obligation to pay or be responsible in any way for payments to Subcontractors, of any Tier.

**Direct Negotiation of Stop Notices**

City shall have the right to directly discuss, negotiate, settle or pay, with notice to or participation by Contractor, any stop notice claims asserted by the Subcontractors, of any Tier, and to deduct such sums paid from sums due to Contractor.

**Release of Stop Notices**

Except to the extent of any payments that City fails to make to Contractor under circumstances that constitute a breach by City of its payment obligations under the Contract Documents, if any stop notice, whether invalid or valid, is made, filed with, served upon or asserted against City or a Homeowner by any of the Subcontractors, of any Tier, or their agent or employee, for money claimed due for Work of any kind provided, then Contractor shall within five (5) Days after written notice by City and at Contractor’s Own Expense, procure, furnish and record appropriate releases or other instruments which under Applicable Laws will fully release, extinguish and removed such stop notice. Unless and until such stop notice is fully released as afore-stated, City shall have the right to retain from any payments then due, or thereafter to become due, an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop notice and any action or proceeding thereon which may be brought to judgment or award. If the amount to be paid, or the amount retained
thereon, is insufficient to satisfy, discharge or defend against such stop notice and any action of proceeding thereon, then Contractor shall be liable for the difference and upon written demand shall immediately deposit the same with City. The provisions in this paragraph are in addition to such other rights as City may have against Contractor under the Contract Documents or Applicable Laws.

**Failure of Payment by City**

If, through no fault of Contractor or failure by Contractor to comply with its obligations under the Contract Documents, Payment is not issued within thirty (30) Days after receipt of an undisputed and properly prepared and submitted Application for Payment then Contractor may, upon fourteen (14) additional Days' written notice to City, stop the Project Work for which such Application for Payment is received until payment is received as to any undisputed and owing work. Any resulting Delay associated with the shut down and start up of the Project Work of a Home as a result of Contractor's proper exercise of its rights under this paragraph shall constitute a Compensable Delay.

**Disputed Payments, Continuous Work**

No dispute or disagreement with respect to the amount of any payment claimed due by Contractor shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

**Completion, Inspection, Punch List, Re-Inspection**

A Contractor-generated punch list must be provided to the City or its representative prior to the request for final inspection. It will be the discretion of the City or its representative to grant the final inspection based on the Contractor generated punch list. Contractor shall achieve Completion of the Project Work for each Home in accordance with the requirements of the Contract Time and other provisions of the Contract Documents. Contractor shall notify RSI Director when Contractor believes that the Project Work for a Home is Complete.
Unless RSI Director determines that the Project Work for Home is not sufficiently complete to warrant an inspection to determine Compliance, RSI Director, accompanied by Inspector of Record and any others deemed appropriate by RSI Director, will inspect Project Work performed. Contractor, along with such Subcontractors and others as RSI Director deems necessary shall participate in the inspection. If the Project Work is found to be Complete, then RSI Director shall proceed to issue a written completion notice as provided hereinafter.

Any items necessary for Compliance that are found missing, incomplete or requiring correction shall be summarized by Contractor in a Completion Punch List and promptly signed by Contractor and delivered to RSI Director. Contractor shall proceed within forty-eight (48) hours after signing the Completion Punch List to commence correction and completion of the items listed.

Contractor shall notify RSI Director when the items listed are completed at which time a re-inspection shall be scheduled in the same manner as the original inspection. If said inspection discloses any item, whether or not included on the original Punch List, which is found missing, incomplete, or requiring correction said item shall be corrected before a Notice of Completion shall be issued.

The City shall be reimbursed or at its option shall withhold from Contractor’s payments, amounts incurred by City to conduct more than two (2) inspections to determine Compliance of the Project Work for any Home. A Notice of Completion shall be issued by the RSI Director when he determines that Compliance of the Project Work for any Home has occurred.

**Occupancy or Use by Homeowner**

Homeowner shall have the right to occupy and use all or any portion of the home at any time during performance of the Work. Except as stated herein, such occupancy or use shall not constitute grounds for adjustment to the Contract Sum or Contract Time. City and Homeowner shall use best efforts to prevent such occupancy or use from unreasonable interference with the conduct of Contractor’s
remaining Work, and any such unreasonable interference that results from Homeowner’s failure to do so shall constitute grounds for Contractor to seek by means of a Claim (submitted pursuant to Article 55 of this Contract), and a Request for Extension (pursuant to Article 23 of this Contract), and adjustment of the Contract Sum and Contract Time for any resulting Extra Work or Delay.

**Final Completion**

Contractor shall expeditiously and diligently perform all items of Project Work on the Final Completion Punch List so as to achieve Final Completion of the Project Work within the requirements of the Contract Time for Final Completion of the Project Work. Contractor shall forward to RSI Director a written notice when Contractor believes that it has completed all of the items on the Final Completion Punch List and is read for a Final Completion Inspection. Unless RSI Director determines that the Project Work is not sufficiently complete to warrant an inspection to determine Final Completion, RSI Director, accompanied by Inspector of Record and any others deemed appropriate by RSI Director, will inspect Project Work performed. If the Project Work is found to be Finally Complete, then RSI Director shall proceed to issue a Notice of Final Completion as provided hereinafter.

If said inspection discloses any item, whether or not included on the Final Completion Punch List, which is found missing, incomplete, or requiring correction, said item shall be corrected before a Notice of Final Completion shall be issued. The City shall be reimbursed or at its option shall withhold from Contractor’s payments, amounts incurred by City to conduct more than two (2) inspections to determine Final Compliance of the Project Work for any Home. A Notice of Final Completion shall be issued by the RSI Director when he determines that Final Compliance of the Project Work for any Home has occurred.

**Concluding Payment**

Upon issuance by RSI Director of the Notice of Final Completion for the Project Work of a Home, Contractor shall submit to RSI Director its Application for
Payment requesting payment for completion. Without limitations to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions precedent to a proper submission, and to RSI Director's approval, of Contractor's Application for Final Payment:

1. Submission of an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project Work for which City or City's or Homeowner's property or funds might be liable have been paid or otherwise satisfied;

2. Submission of consent of Surety, if any, to Completion Payment;

3. Submission of a certificate evidencing that the insurance required by the Contract Documents is in force;

4. Submission of conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Code Section 3262(d)(3) executed by Contractor and by all Subcontractors, of every Tier, performing any portion of the Project Work;

5. Submission of all Close-Out Documents for the Project Work;

6. Submission of adequate and complete certified payroll records as required by the Contract Documents for any time period that Project Work was performed, which have not been submitted by Contractor in connection with its previous Applications for Payments.


8. Submission of certificates by Contractor and each Subcontractor, as required by any applicable collective bargaining agreement or trust agreement or Applicable Laws, certifying that all employees benefits relating to the Project Work due and owing having been paid in full; and
9. Submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion of the Project Work.

Article 31 – FINAL PAYMENT OF UNDISPUTED AMOUNT

Final payment by the City of undisputed amounts is contingent upon the Contractor furnishing the City with a release of all claims against the City arising by virtue of those amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release pursuant to Section 7100 of the Public Contract Code.
**DIVISION 2 – FAA REQUIREMENTS**

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Article 32 – GENERAL

1. These FAA Contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each Article, the contractor shall insert in each subcontract all of the stipulations contained in these FAA Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following FAA Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

   a. Incorporation by reference of FAA requirements is not permitted

   b. Article 35 of this Contract that set forth FAA Minimum Wage Provisions

   c. Article 36 of this Contract that set forth FAA requirements regarding Statements and Payrolls

5. Disputes arising out of standard FAA labor provisions 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 (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:

a. Discriminate against labor from any other State, possession, or territory of the United States, or

b. Employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

7. This contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, the Federal Labor provisions and the Equal Employment Opportunity (EEO) provisions as contained in the contract, specifications and bid documents.

8. Required FAA Forms. Each Contractor, at the time that he submitted his bid, shall have completed, signed and furnished the following FAA required forms:

a. "Bidder's Statement on Previous Contracts Subject to EEO Clause", if applicable

b. "Assurance of Disadvantaged Business Enterprise Participation"

c. "Letter of Intent"

d. "Suspension of Disbarment Requirement for All Contracts over $25,000"

e. "Trade Restriction Clauses"

f. "Buy American – Steel and Manufactured Products for Construction Contracts"

g. "City of Inglewood Bidder-DBE Information Form”.

9. Airport Improvement Program (AIP) Project. The work in this contract is included in the AIP Project No. 96 (and possibly subsequent projects) which is being undertaken and accomplished by the City of Inglewood in accordance with the terms and conditions of a grant agreement between the City of Inglewood
and the United States under the Airport and Airway Safety and Capacity Expansion Act of 1987, pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

10. **Veteran's Preference.** In the employment of labor (except in executive, administrative and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

11. **FAA Inspection and Review.** The contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.

12. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or lease of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

13. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to his books, records, accounts, other sources of information and his facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who
fails or refuses to furnish this information, the contractor shall so certify to the
sponsor or the FAA, as appropriate, and shall set forth what efforts he has made to
obtain the information.

14. **Sanction for Noncompliance.** In the event of the contractor's
noncompliance with the nondiscrimination provisions of this contract, the sponsor
shall impose such contract sanctions as they or the FAA may determine to be
appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract
   until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract in whole
   or in part.

15. **Incorporation of Provisions.** The contractor shall include the provisions
relating to Minimum Wages and Statement of Records and Payroll as set forth in
Articles 35 and 36 of this contract in every subcontract, including procurement of
materials and leases of equipment, unless exempt by the Regulations or directives
issued pursuant thereto. The contractor shall take such action with respect to any
subcontract or procurement as the sponsor or the FAA 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 supplier as a result of such direction, the
contractor may request the sponsor to enter into such litigation to protect the
interests of the sponsor and, in addition, the contractor may request the United
States to enter into such litigation to protect the interests of the United States.

16. **Breach of Contract Terms - Sanctions.** Contracts/subcontracts shall
contain such contractual provisions or conditions which will allow for
administrative, contractual, or legal remedies in instances where contractors violate
or breach contract terms, and provide for such sanctions and penalties as may be
appropriate. A sample clause is:
"Any violation or breach of the terms of this contract on the part of the contractor/subcontractor may result in the suspension or termination of this contract, or such other action which may be necessary to enforce the rights of the parties of this agreement."

17. **Rights to Inventions - Materials.** All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the recipient of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the grantee.

18. **Access to Documents, Records, etc., Clauses for Construction Contracts and Subcontracts as Indicated.**

   a. **For All Cost-Reimbursement Type of Contracts, include:** "The Administrator of the FAA and the Comptroller General of the United States, or an authorized representative of either, shall be allowed access to the contractor's records which are pertinent to the contract for the purpose of accounting and audit."

   b. **For All Negotiated Contracts in Excess of $10,000 Awarded by a Sponsor, Include a Provision That: **"The sponsor, the FAA, the Comptroller General of the United States, or any of their duly authorized representatives, shall be allowed access to any books, documents, papers, and records of the contractor which are directly pertinent to the AIP project for the purpose of making audit, examination, excerpts and transcriptions."
Article 33 – SCOPE OF WORK

1. Intent of contract. The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

2. Omitted items. The RSI Director/Engineer may, in the Owner’s best interest, omit from the work any contract item, except major contract items. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement. Should a contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with the subsection 90-04 titled PAYMENT FOR OMITTED ITEMS of Section 90.

3. Maintenance of traffic. It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor’s equipment and personnel, is the most important consideration. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas (AOAs) of the airport with respect to his or her own operations and the operations of all subcontractors as specified in the subsection 80-04 titled LIMITATION OF OPERATIONS of Section 80. It is further understood and agreed that the Contractor shall provide for the uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in the subsection 70-15 titled CONTRACTOR’S
RESPONSIBILITY FOR UTILITY SERVICE AND FACILITIES OF OTHERS in Section 70.

With respect to his or her own operations and the operations of all subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying personnel, equipment, vehicles, storage areas, and any work area or condition that may be hazardous to the operation of aircraft, fire-rescue equipment, or maintenance vehicles at the airport.

When the contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor’s performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall be responsible for the repair of any damage caused by the Contractor’s equipment and personnel. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag person, and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices (MUTCD) (http://mutcd.fhwa.dot.gov), unless otherwise specified. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways.

4. **Removal of existing structures.** All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the RSI Director/Engineer shall be notified prior to disturbing such structure. The
disposition of existing structures so encountered shall be immediately determined by the RSI Director/Engineer in accordance with the provisions of the contract.

Except as provided in the subsection 40-07 titled RIGHTS IN AND USE OF MATERIALS FOUND IN THE WORK of this section, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be used in the work as otherwise provided for in the contract and shall remain the property of the Owner when so used in the work.

5. **Rights in and use of materials found in the work.** Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be either embankment or waste, the Contractor may at his or her option either:

   a. Use such material in another contract item, providing such use is approved by the RSI Director/Engineer and is in conformance with the contract specifications applicable to such use; or,

   b. Remove such material from the site, upon written approval of the RSI Director/Engineer; or

   c. Use such material for the Contractor's own temporary construction on site; or,

   d. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., the Contractor shall request the RSI Director/Engineer's approval in advance of such use.

Should the RSI Director/Engineer approve the Contractor's request to exercise option a., b., or c, the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at his or her own expense, such removed or excavated material with an agreed equal
volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for use of such material used in the work or removed from the site.

Should the RSI Director/Engineer approve the Contractor’s exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of his or her exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

6. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property Owner.

Article 34 – CONTROL OF WORK AND MATERIALS

1. Authority of the RSI Director/Engineer. The RSI Director/Engineer shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of
performance and rate of progress of the work. The RSI Director/Engineer shall
decide all questions that may arise as to the interpretation of the specifications or
plans relating to the work. The RSI Director/Engineer shall determine the amount
and quality of the several kinds of work performed and materials furnished which
are to be paid for the under contract.

The RSI Director/Engineer does not have the authority to accept pavements
that do not conform to FAA specification requirements.

2. **Conformity with plans and specifications.** All work and all materials
furnished shall be in reasonably close conformity with the lines, grades, grading
sections, cross-sections, dimensions, material requirements, and testing
requirements that are specified (including specified tolerances) in the contract,
plans or specifications.

If the RSI Director/Engineer finds the materials furnished, work performed,
or the finished product not within reasonably close conformity with the plans and
specifications but that the portion of the work affected will, in his or her opinion,
result in a finished product having a level of safety, economy, durability, and
workmanship acceptable to the Owner, the RSI Director/Engineer will advise the
Owner of his or her determination that the affected work be accepted and remain in
place. In this event, the RSI Director/Engineer will document the determination and
recommend to the Owner a basis of acceptance that will provide for an adjustment
in the contract price for the affected portion of the work. The RSI
Director/Engineer's determination and recommended contract price adjustments
will be based on sound RSI Director/Engineer judgment and such tests or retests of
the affected work as are, in the RSI Director/Engineer's opinion, needed. Changes in
the contract price shall be covered by contract change order or supplemental
agreement as applicable.

If the RSI Director/Engineer finds the materials furnished, work performed,
or the finished product are not in reasonably close conformity with the plans and
specifications and have resulted in an unacceptable finished product, the affected
work or materials shall be removed and replaced or otherwise corrected by and at
the expense of the Contractor in accordance with the RSI Director/Engineer’s
written orders.

For the purpose of this subsection, the term “reasonably close conformity”
shall not be construed as waiving the Contractor’s responsibility to complete the
work in accordance with the contract, plans, and specifications. The term shall not
be construed as waiving the RSI Director/Engineer’s responsibility to insist on strict
compliance with the requirements of the contract, plans, and specifications during
the Contractor’s execution of the work, when, in the RSI Director/Engineer’s
opinion, such compliance is essential to provide an acceptable finished portion of the
work.

For the purpose of this subsection, the term “reasonably close conformity” is
also intended to provide the RSI Director/Engineer with the authority, after
consultation with the FAA, to use sound engineering judgment in his or her
determinations as to acceptance of work that is not in strict conformity, but will
provide a finished product equal to or better than that intended by the
requirements of the contract, plans and specifications.

For Airport Improvement Program (AIP) contracts, the Sponsor shall keep
the FAA advised of the RSI Director/Engineer’s determinations as to acceptance of
work that is not in reasonably close conformity to the contract, plans, and
specifications. Change orders or supplemental agreements must be reviewed by the
FAA. Unless specifically requested by the FAA, the Sponsor may not have to obtain
prior FAA approval with contract changes. However, if a Sponsor proceeds with a
contract change without FAA prior approval, it is at the Sponsor’s risk. The RSI
Director/Engineer may consult with the FAA for the determination to accept
materials that are not in strict conformance with the specification requirements.
The RSI Director/Engineer will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions incident thereto.

3. Coordination of contract, plans, and specifications. The contract, plans, specifications, and all referenced standards cited are essential parts of the contract requirements. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; contract technical specifications shall govern over contract general provisions, plans, cited standards for materials or testing, and cited advisory circulars (ACs); contract general provisions shall govern over plans, cited standards for materials or testing, and cited ACs; plans shall govern over cited standards for materials or testing and cited ACs. If any paragraphs contained in the Special Provisions conflict with General Provisions or Technical Specifications, the Special Provisions shall govern.

From time to time, discrepancies within cited testing standards occur due to the timing of the change, edits, and/or replacement of the standards. If the Contractor discovers any apparent discrepancy within standard test methods, the Contractor shall immediately ask the RSI Director/Engineer for an interpretation and decision, and such decision shall be final.

4. Authority and duties of inspectors. Inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor. Inspectors are authorized to notify the Contractor or his or her representatives of any failure of the work or materials to conform to the requirements of the contract,
plans, or specifications and to reject such nonconforming materials in question until such issues can be referred to the RSI Director/Engineer for a decision.

5. **Inspection of the work.** All materials and each part or detail of the work shall be subject to inspection. The RSI Director/Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the RSI Director/Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor’s expense.

Any work done or materials used without supervision or inspection by an authorized representative of the Owner may be ordered removed and replaced at the Contractor’s expense unless the Owner’s representative failed to inspect after having been given reasonable notice in writing that the work was to be performed. Should the contract work include relocation, adjustment, or any other modification to existing facilities, not the property of the (contract) Owner, authorized representatives of the Owners of such facilities shall have the right to inspect such work. Such inspection shall in no sense make any facility owner a party to the contract, and shall in no way interfere with the rights of the parties to this contract.

6. **Load restrictions.** The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the
work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his or her hauling equipment and shall correct such damage at his or her own expense.

7. **Maintenance during construction.** The Contractor shall maintain the work during construction and until the work is accepted. Maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations. All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

8. **Failure to maintain the work.** Should the Contractor at any time fail to maintain the work as provided in the subsection **50-12 titled MAINTENANCE DURING CONSTRUCTION** of this section, the RSI Director/Engineer shall immediately notify the Contractor of such non-compliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists.
Should the Contractor fail to respond to the RSI Director/Engineer's notification, the Owner may suspend any work necessary for the Owner to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the Owner, shall be deducted from monies due or to become due the Contractor.

9. **Partial acceptance.** If at any time during the execution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the Owner, the Contractor may request the RSI Director/Engineer to make final inspection of that unit. If the RSI Director/Engineer finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, the RSI Director/Engineer may accept it as being complete, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the contract.

10. **Final acceptance.** Upon due notice from the Contractor of presumptive completion of the entire project, the RSI Director/Engineer and Owner will make an inspection. If all construction provided for and contemplated by the contract is found to be complete in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The RSI Director/Engineer shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the RSI Director/Engineer will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the RSI Director/Engineer will make the
final acceptance and notify the Contractor in writing of this acceptance as of the
date of final inspection.

11. **Cost reduction incentive.** The provisions of this subsection will apply
only to contracts awarded to the lowest bidder pursuant to competitive bidding.

On projects with original contract amounts in excess of $100,000, the
Contractor may submit to the RSI Director/Engineer, in writing, proposals for
modifying the plans, specifications or other requirements of the contract for the sole
purpose of reducing the cost of construction. The cost reduction proposal shall not
impair, in any manner, the essential functions or characteristics of the project,
including but not limited to service life, economy of operation, ease of maintenance,
desired appearance, design and safety standards. This provision shall not apply
unless the proposal submitted is specifically identified by the Contractor as being
presented for consideration as a value engineering proposal.

Not eligible for cost reduction proposals are changes in the basic design of a
pavement type, runway and taxiway lighting, visual aids, hydraulic capacity of
drainage facilities, or changes in grade or alignment that reduce the geometric
standards of the project.

As a minimum, the following information shall be submitted by the
Contractor with each proposal:

a. A description of both existing contract requirements for performing the
work and the proposed changes, with a discussion of the comparative advantages
and disadvantages of each.

b. An itemization of the contract requirements that must be changed if the
proposal is adopted.

c. A detailed estimate of the cost of performing the work under the existing
contract and under the proposed changes.
d. A statement of the time by which a change order adopting the proposal
must be issued.

e. A statement of the effect adoption of the proposal will have on the time for
completion of the contract.

f. The contract items of work affected by the proposed changes, including any
quantity variation attributable to them.

The Contractor may withdraw, in whole or in part, any cost reduction
proposal not accepted by the RSI Director/Engineer, within the period specified in
the proposal. The provisions of this subsection shall not be construed to require the
RSI Director/Engineer to consider any cost reduction proposal that may be
submitted.

The Contractor shall continue to perform the work in accordance with the
requirements of the contract until a change order incorporating the cost reduction
proposal has been issued. If a change order has not been issued by the date upon
which the Contractor’s cost reduction proposal specifies that a decision should be
made, or such other date as the Contractor may subsequently have requested in
writing, such cost reduction proposal shall be deemed rejected.

The RSI Director/Engineer shall be the sole judge of the acceptability of a
cost reduction proposal and of the estimated net savings from the adoption of all or
any part of such proposal. In determining the estimated net savings, the RSI
Director/Engineer may disregard the contract bid prices if, in the RSI
Director/Engineer’s judgment such prices do not represent a fair measure of the
value of the work to be performed or deleted.

The Owner may require the Contractor to share in the Owner’s costs of
investigating a cost reduction proposal submitted by the Contractor as a condition
of considering such proposal. Where such a condition is imposed, the Contractor
shall acknowledge acceptance of it in writing. Such acceptance shall constitute full
authority for the Owner to deduct the cost of investigating a cost reduction proposal from amounts payable to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a contract change order that shall specifically state that it is executed pursuant to this subsection. Such change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted and shall include any conditions upon which the RSI Director/Engineer's approval is based. The change order shall also set forth the estimated net savings attributable to the cost reduction proposal. The net savings shall be determined as the difference in costs between the original contract costs for the involved work items and the costs occurring as a result of the proposed change. The change order shall also establish the net savings agreed upon and shall provide for adjustment in the contract price that will divide the net savings equally between the Contractor and the Owner.

The Contractor's 50% share of the net savings shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work.

Acceptance of the cost-reduction proposal and performance of the cost-reduction work shall not extend the time of completion of the contract unless specifically provided for in the contract change order.

12. **Source of supply and quality requirements.** The materials used in the work shall conform to the requirements of the contract, plans, and specifications. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

In order to expedite the inspection and testing of materials, the Contractor shall furnish complete statements to the RSI Director/Engineer as to the origin, composition, and manufacture of all materials to be used in the work. Such
statements shall be furnished promptly after execution of the contract but, in all
cases, prior to delivery of such materials.

For projects funded under the Airport Improvement Program (AIP), Contractor
shall supply steel and manufactured products that conform to the Buy American
provisions established under 49 USC Section 50101 as follows: “Steel products must
be 100% U.S. domestic product Manufactured Products. Preference shall be given to
products that are 100% manufactured and assembled in the U.S. Manufactured
products not meeting the 100% U.S. domestic preference may only be used on the
project if the FAA has officially granted a permissible waiver to Buy American
Preferences. Submittals for all manufactured products must include certification of
compliance with Buy American requirements as established under 49 USC Section
50101. Submittal must include sufficient information to confirm compliance or
submittal will be returned with no action.”

Federal Contract Clauses are available at the following FAA website:
http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

At the RSI Director/Engineer’s option, materials may be approved at the
source of supply before delivery is stated. If it is found after trial that sources of
supply for previously approved materials do not produce specified products, the
Contractor shall furnish materials from other sources.

The Contractor shall furnish airport lighting equipment that conforms to the
requirements of cited materials specifications. In addition, where an FAA
specification for airport lighting equipment is cited in the plans or specifications,
the Contractor shall furnish such equipment that is:

a. Listed in advisory circular (AC) 150/5345-53, Airport Lighting Equipment
Certification Program, and Addendum that is in effect on the date of advertisement;
and,

b. Produced by the manufacturer as listed in the Addendum cited above for
the certified equipment part number.
13. **Samples, tests, and cited specifications.** Unless otherwise designated, all materials used in the work shall be inspected, tested, and approved by the RSI Director/Engineer before incorporation in the work. Any work in which untested materials are used without approval or written permission of the RSI Director/Engineer shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the RSI Director/Engineer, shall be removed at the Contractor's expense.

Unless otherwise designated, quality assurance tests in accordance with the cited standard methods of ASTM, American Association of State Highway and Transportation Officials (AASHTO), Federal Specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids, will be made by and at the expense of the RSI Director/Engineer.

The testing organizations performing on-site quality assurance field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel, including the Contractor's representative at his or her request. Unless otherwise designated, samples for quality assurance will be taken by a qualified representative of the RSI Director/Engineer. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative at their request after review and approval of the RSI Director/Engineer.

The Contractor shall employ a testing organization to perform all Contractor required Quality Control tests. The Contractor shall submit to the RSI Director/Engineer resumes on all testing organizations and individual persons who will be performing the tests. The RSI Director/Engineer will determine if such persons are qualified. All the test data shall be reported to the RSI Director/Engineer after the results are known. A legible, handwritten copy of all
test data shall be given to the RSI Director/Engineer daily, along with printed reports, in an approved format, on a weekly basis. After completion of the project, and prior to final payment, the Contractor shall submit a final report to the RSI Director/Engineer showing all test data reports, plus an analysis of all results showing ranges, averages, and corrective action taken on all failing tests.

14. **Certification of compliance.** The RSI Director/Engineer may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer’s certificates of compliance stating that such materials or assemblies fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified.

    Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

    The form and distribution of certificates of compliance shall be as approved by the RSI Director/Engineer.

    When a material or assembly is specified by “brand name or equal” and the Contractor elects to furnish the specified “brand name,” the Contractor shall be required to furnish the manufacturer’s certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

    a. Conformance to the specified performance, testing, quality or dimensional requirements; and,

    b. Suitability of the material or assembly for the use intended in the contract work.

    Should the Contractor propose to furnish an “or equal” material or assembly, the Contractor shall furnish the manufacturer’s certificates of compliance as
hereinbefore described for the specified brand name material or assembly. However, the RSI Director/Engineer shall be the sole judge as to whether the proposed “or equal” is suitable for use in the work.

The RSI Director/Engineer reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

15. **Plant Inspection.** The RSI Director/Engineer or his or her authorized representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for acceptance of the material or assembly.

Should the RSI Director/Engineer conduct plant inspections, the following conditions shall exist:

a. The RSI Director/Engineer shall have the cooperation and assistance of the Contractor and the producer with whom the RSI Director/Engineer has contracted for materials.

b. The RSI Director/Engineer shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of the materials being furnished.

c. If required by the RSI Director/Engineer, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material that has been tested and approved at the source of supply after it has been delivered to the site. The RSI Director/Engineer shall have the right to reject only
material which, when retested, does not meet the requirements of the contract, plans, or specifications.

16. **Storage of materials.** Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the RSI Director/Engineer. Materials to be stored on airport property shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft. Unless otherwise shown on the plans, the storage of materials and the location of the Contractor’s plant and parked equipment or vehicles shall be as directed by the RSI Director/Engineer. Private property shall not be used for storage purposes without written permission of the Owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the RSI Director/Engineer a copy of the property Owner’s permission.

All storage sites on private or airport property shall be restored to their original condition by the Contractor at his or her entire expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

17. **Unacceptable materials.** Any material or assembly that does not conform to the requirements of the contract, plans, or specifications shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the RSI Director/Engineer.

Rejected material or assembly, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the RSI Director/Engineer has approved its use in the work.
18. **Owner furnished materials.** The Contractor shall furnish all materials required to complete the work, except those specified, if any, to be furnished by the Owner. Owner-furnished materials shall be made available to the Contractor at the location specified.

All costs of handling, transportation from the specified location to the site of work, storage, and installing Owner-furnished materials shall be included in the unit price bid for the contract item in which such Owner-furnished material is used.

After any Owner-furnished material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor’s handling, storage, or use of such Owner-furnished material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor’s handling, storage, or use of Owner-furnished materials.

**Article 35 – LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC**

1. **Restoration of surfaces disturbed by others.** The Owner reserves the right to authorize the construction, reconstruction, or maintenance of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA) facility, or a utility service of another government agency at any time during the progress of the work. To the extent that such construction, reconstruction, or maintenance has been coordinated with the Owner, such authorized work (by others) is indicated as follows:

List all authorized work and include the following information as a minimum:

- Owner (Utility or Other Facility) **SOUTHERN CALIFORNIA EDISON (SCE) and DIG-ALERT**
- Location – City of Inglewood
- Person to Contact – Local Representative

Except as listed above, the Contractor shall not permit any individual, firm, or corporation to excavate or otherwise disturb such utility services or facilities.
located within the limits of the work without the written permission of the RSI
Director/Engineer.

Should the Owner of public or private utility service, FAA, or NOAA facility,
or a utility service of another government agency be authorized to construct,
reconstruct, or maintain such utility service or facility during the progress of the
work, the Contractor shall cooperate with such Owners by arranging and
performing the work in this contract to facilitate such construction, reconstruction
or maintenance by others whether or not such work by others is listed above. When
ordered as extra work by the RSI Director/Engineer, the Contractor shall make all
necessary repairs to the work which are due to such authorized work by others,
unless otherwise provided for in the contract, plans, or specifications. It is
understood and agreed that the Contractor shall not be entitled to make any claim
for damages due to such authorized work by others or for any delay to the work
resulting from such authorized work.

2. Federal aid participation. For Airport Improvement Program (AIP)
contracts, the United States Government has agreed to reimburse the Owner for
some portion of the contract costs. Such reimbursement is made from time to time
upon the Owner’s request to the FAA. In consideration of the United States
Government’s (FAA’s) agreement with the Owner, the Owner has included
provisions in this contract pursuant to the requirements of Title 49 of the USC and
the Rules and Regulations of the FAA that pertain to the work.

As required by the USC, the contract work is subject to the inspection and
approval of duly authorized representatives of the FAA Administrator, and is
further subject to those provisions of the rules and regulations that are cited in the
contract, plans, or specifications.

No requirement of the USC, the rules and regulations implementing the
USC, or this contract shall be construed as making the Federal Government a party
to the contract nor will any such requirement interfere, in any way, with the rights of either party to the contract.

3. **Sanitary, health, and safety provisions.** The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his or her employees as may be necessary to comply with the requirements of the state and local Board of Health, or of other bodies or tribunals having jurisdiction.

Attention is directed to Federal, state, and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to his or her health or safety.

4. **Public convenience and safety.** The Contractor shall control his or her operations and those of his or her subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to his or her own operations and those of his or her subcontractors and all suppliers in accordance with the **subsection 40-05 titled MAINTENANCE OF TRAFFIC of Section 40** hereinbefore specified and shall limit such operations for the convenience and safety of the traveling public as specified in the subsection **80-04 titled LIMITATION OF OPERATIONS of Section 80** hereinafter.

5. **Barricades, warning signs, and hazard markings.** The Contractor shall furnish, erect, and maintain all barricades, warning signs, and markings for hazards necessary to protect the public and the work. When used during periods of darkness, such barricades, warning signs, and hazard markings shall be suitably illuminated.
For vehicular and pedestrian traffic, the Contractor shall furnish, erect, and maintain barricades, warning signs, lights and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices.

The Contractor shall furnish, erect, and maintain markings and associated lighting of open trenches, excavations, temporary stock piles, and the Contractor's parked construction equipment that may be hazardous to the operation of emergency fire-rescue or maintenance vehicles on the airport in reasonable conformance to AC 150/5370-2, Operational Safety on Airports during Construction.

The Contractor shall identify each motorized vehicle or piece of construction equipment in reasonable conformance to AC 150/5370-2.

The Contractor shall furnish and erect all barricades, warning signs, and markings for hazards prior to commencing work that requires such erection and shall maintain the barricades, warning signs, and markings for hazards until their removal is directed by the RSI Director/Engineer.

Open-flame type lights shall not be permitted.

6. **Protection and restoration of property and landscape.** The Contractor shall be responsible for the preservation of all public and private property, and shall protect carefully from disturbance or damage all land monuments and property markers until the RSI Director/Engineer has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the execution of the work, resulting from any act, omission, neglect, or misconduct in manner or method of executing the work, or at any time due to defective work or materials, and said responsibility shall not be released until the project has been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the
Contractor, the Contractor shall restore, at his or her own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

7. Contractor’s responsibility for work. Until the RSI Director/Engineer’s final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with the subsection 50-14 titled PARTIAL ACCEPTANCE of Section 50, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of government authorities.

If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities at his or her expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established planting, seeding, and sodding furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

8. Contractor’s responsibility for utility service and facilities of others. As provided in the subsection 70-04 titled RESTORATION OF SURFACES
DISTURBED BY OTHERS of this section, the Contractor shall cooperate with the
Owner of any public or private utility service, FAA or NOAA, or a utility service of
another government agency that may be authorized by the Owner to construct,
reconstruct or maintain such utility services or facilities during the progress of the
work. In addition, the Contractor shall control their operations to prevent the
unscheduled interruption of such utility services and facilities.

To the extent that such public or private utility services, FAA, or NOAA
facilities, or utility services of another governmental agency are known to exist
within the limits of the contract work, the approximate locations have been
indicated on the plans and the Owners are indicated as follows:

It is understood and agreed that the Owner does not guarantee the accuracy
or the completeness of the location information relating to existing utility services,
facilities, or structures that may be shown on the plans or encountered in the work.
Any inaccuracy or omission in such information shall not relieve the Contractor of
the responsibility to protect such existing features from damage or unscheduled
interruption of service.

It is further understood and agreed that the Contractor shall, upon execution
of the contract, notify the Owners of all utility services or other facilities of his or
her plan of operations. Such notification shall be in writing addressed to THE
PERSON TO CONTACT as provided in this subsection and subsection 70-04 titled
RESTORATION OF SURFACES DISTURBED BY OTHERS of this section. A copy
of each notification shall be given to the RSI Director/Engineer.

In addition to the general written notification provided, it shall be the
responsibility of the Contractor to keep such individual Owners advised of changes
in their plan of operations that would affect such Owners.

Prior to beginning the work in the general vicinity of an existing utility
service or facility, the Contractor shall again notify each such Owner of their plan of
operation. If, in the Contractor's opinion, the Owner's assistance is needed to locate
the utility service or facility or the presence of a representative of the Owner is
desirable to observe the work, such advice should be included in the notification.
Such notification shall be given by the most expeditious means to reach the utility
owner's PERSON TO CONTACT no later than two normal business days prior to
the Contractor’s commencement of operations in such general vicinity. The
Contractor shall furnish a written summary of the notification to the RSI
Director/Engineer.

The Contractor's failure to give the two days' notice shall be cause for the
Owner to suspend the Contractor's operations in the general vicinity of a utility
service or facility.

Where the outside limits of an underground utility service have been located
and staked on the ground, the Contractor shall be required to use hand excavation
methods within 3 feet (1 m) of such outside limits at such points as may be required
to ensure protection from damage due to the Contractor's operations.

Should the Contractor damage or interrupt the operation of a utility service
or facility by accident or otherwise, the Contractor shall immediately notify the
proper authority and the RSI Director/Engineer and shall take all reasonable
measures to prevent further damage or interruption of service. The Contractor, in
such events, shall cooperate with the utility service or facility owner and the RSI
Director/Engineer continuously until such damage has been repaired and service
restored to the satisfaction of the utility or facility owner.

The Contractor shall bear all costs of damage and restoration of service to
any utility service or facility due to their operations whether due to negligence or
accident. The Owner reserves the right to deduct such costs from any monies due or
which may become due the Contractor, or his or her surety.
9. **Furnishing rights-of-way.** The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

10. **No waiver of legal rights.** Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or his or her surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill his or her obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

    The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

11. **Environmental protection.** The Contractor shall comply with all Federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

12. **Archaeological and historical findings.** Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.
Should the Contractor encounter, during his or her operations, any building, part of a building, structure, or object that is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the RSI Director/Engineer. The RSI Director/Engineer will immediately investigate the Contractor's finding and the Owner will direct the Contractor to either resume operations or to suspend operations as directed.

Should the Owner order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract change order or supplemental agreement as provided in the subsection 40-04 titled EXTRA WORK of Section 40 and the subsection 90-05 titled PAYMENT FOR EXTRA WORK of Section 90. If appropriate, the contract change order or supplemental agreement shall include an extension of contract time in accordance with the subsection 80-07 titled DETERMINATION AND EXTENSION OF CONTRACT TIME of Section 80. The contract language suggested in subsection 70-20 is intended to remind airport Owners that proper planning will prevent construction delays that may be caused when objects of archaeological or historical significance are encountered in the work. Airport Owners should include in their planning the coordination with state and local planning bodies as may be required by state and local laws pertaining to the National Historic Preservation Act of 1966.

As a general rule, disposition of known archaeological or historic objects that are situated on the site of the work should be covered by a separate contract when such disposition is required as a part of FAA project approval.

Article 36 – EXECUTION AND PROGRESS

1. **Subletting of contract.** The Owner will not recognize any subcontractor on the work. The Contractor shall at all times when work is in...
progress be represented either in person, by a qualified superintendent, or by other
designated, qualified representative who is duly authorized to receive and execute
orders of the RSI Director/Engineer.

The Contractor shall provide copies of all subcontracts to the RSI
Director/Engineer. The Contractor shall perform, with his organization, an amount
of work equal to at least 25 percent of the total contract cost.

Should the Contractor elect to assign his or her contract, said assignment
shall be concurred in by the surety, shall be presented for the consideration and
approval of the Owner, and shall be consummated only on the written approval of
the Owner.

2. Notice to proceed. The notice to proceed shall state the date on which
it is expected the Contractor will begin the construction and from which date
contract time will be charged. The Contractor shall begin the work to be performed
under the contract within 10 days of the date set by the RSI Director/Engineer in
the written notice to proceed, but in any event, the Contractor shall notify the RSI
Director/Engineer at least 24 hours in advance of the time actual construction
operations will begin. The Contractor shall not commence any actual construction
prior to the date on which the notice to proceed is issued by the Owner.

3. Default and termination of contract. The Contractor shall be
considered in default of his or her contract and such default will be considered as
cause for the Owner to terminate the contract for any of the following reasons if the
Contractor:

a. Fails to begin the work under the contract within the time specified in the
Notice to Proceed, or

b. Fails to perform the work or fails to provide sufficient workers, equipment
and/or materials to assure completion of work in accordance with the terms of the
contract, or
c. Performs the work unsuitably or neglects or refuses to remove materials or
to perform anew such work as may be rejected as unacceptable and unsuitable, or

d. Discontinues the execution of the work, or

e. Fails to resume work which has been discontinued within a reasonable
time after notice to do so, or

f. Becomes insolvent or is declared bankrupt, or commits any act of
bankruptcy or insolvency, or

g. Allows any final judgment to stand against the Contractor unsatisfied for a
period of 10 days, or

h. Makes an assignment for the benefit of creditors, or

i. For any other cause whatsoever, fails to carry on the work in an acceptable
manner.

Should the RSI Director/Engineer consider the Contractor in default of the
contract for any reason above, the RSI Director/Engineer shall immediately give
written notice to the Contractor and the Contractor’s surety as to the reasons for
considering the Contractor in default and the Owner’s intentions to terminate the
contract.

If the Contractor or surety, within a period of 10 days after such notice, does
not proceed in accordance therewith, then the Owner will, upon written notification
from the RSI Director/Engineer of the facts of such delay, neglect, or default and the
Contractor’s failure to comply with such notice, have full power and authority
without violating the contract, to take the execution of the work out of the hands of
the Contractor. The Owner may appropriate or use any or all materials and
equipment that have been mobilized for use in the work and are acceptable and may
enter into an agreement for the completion of said contract according to the terms
and provisions thereof, or use such other methods as in the opinion of the RSI
Director/Engineer will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

4. **Termination for national emergencies.** The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President with respect to the execution of war or in the interest of national defense.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the RSI Director/Engineer.

Termination of the contract or a portion thereof shall neither relieve the Contractor of his or her responsibilities for the completed work nor shall it relieve
his or her surety of its obligation for and concerning any just claim arising out of the work performed.

Article 37 – MEASUREMENT AND PAYMENT

1. **Measurement of quantities.** All work completed under the contract will be measured by the RSI Director/Engineer, or his or her authorized representatives, using United States Customary Units of Measurement or the International System of Units.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet (0.8 square meters) or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the RSI Director/Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation the average end area method or other acceptable methods will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inch.
The term “ton” will mean the short ton consisting of 2,000 lb (907 kg) avoirdupois. All materials that are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designed by the RSI Director/Engineer. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the RSI Director/Engineer directs, and each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable for the materials hauled, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the RSI Director/Engineer in writing, material specified to be measured by the cubic yard (cubic meter) may be weighed, and such weights will be converted to cubic yards (cubic meters) for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the RSI Director/Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon (liter) or ton (kg). When measured by volume, such volumes will be measured at 60°F (16°C) or will be corrected to the volume at 60°F (16°C) using ASTM D1250 for asphalts or ASTM D633 for tars.
Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton (kg) or hundredweight (kg).

Timber will be measured by the thousand feet board measure (MFBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term “lump sum” when used as an item of payment will mean complete payment for the work described in the contract.

If a complete structure or structural unit (in effect, “lump sum” work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work.

Special equipment ordered by the RSI Director/Engineer in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account work as provided in the subsection 90-05 titled PAYMENT FOR EXTRA WORK of this section.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.
Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within 0.05% of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed one-tenth of 1% of the nominal rated capacity of the scale, but not less than 1 pound (454 grams). The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50-pound (2.3 kg) weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site.

Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales “overweighing” (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of one-half of 1%.

In the event inspection reveals the scales have been under weighing (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or

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payment, shall be included in the unit contract prices for the various items of the
project.

When the estimated quantities for a specific portion of the work are
designated as the pay quantities in the contract, they shall be the final quantities
for which payment for such specific portion of the work will be made, unless the
dimensions of said portions of the work shown on the plans are revised by the RSI
Director/Engineer. If revised dimensions result in an increase or decrease in the
quantities of such work, the final quantities for payment will be revised in the
amount represented by the authorized changes in the dimensions.

2. **Scope of payment.** The Contractor shall receive and accept
compensation provided for in the contract as full payment for furnishing all
materials, for performing all work under the contract in a complete and acceptable
manner, and for all risk, loss, damage, or expense of whatever character arising out
of the nature of the work or the execution thereof, subject to the provisions of the
subsection 70-18 titled NO WAIVER OF LEGAL RIGHTS of Section 70, as required
to meet all state and local regulations.

When the “basis of payment” subsection of a technical specification requires that
the contract price (price bid) include compensation for certain work or material
essential to the item, this same work or material will not also be measured for
payment under any other contract item which may appear elsewhere in the
contract, plans, or specifications.

In some areas, release of liens prior to paying the full amount to the prime
Contractor may void the contract.

3. **Payment for materials on hand.** Partial payments may be made to the
extent of the delivered cost of materials to be incorporated in the work, provided
that such materials meet the requirements of the contract, plans, and specifications
and are delivered to acceptable sites on the airport property or at other sites in the
vicinity that are acceptable to the Owner. Such delivered costs of stored or
stockpiled materials may be included in the next partial payment after the following conditions are met:

a. The material has been stored or stockpiled in a manner acceptable to the RSI Director/Engineer at or on an approved site.

b. The Contractor has furnished the RSI Director/Engineer with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

c. The Contractor has furnished the RSI Director/Engineer with satisfactory evidence that the material and transportation costs have been paid.

d. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.

e. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his or her responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

4. **Payment of withheld funds.** At the Contractor's option, if an Owner withholds retainage in accordance with the methods described in subsection 90-06 PARTIAL PAYMENTS, the Contractor may request that the Owner deposit the
retainage into an escrow account. The Owner’s deposit of retainage into an escrow account is subject to the following conditions:

a. The Contractor shall bear all expenses of establishing and maintaining an escrow account and escrow agreement acceptable to the Owner.

b. The Contractor shall deposit to and maintain in such escrow only those securities or bank certificates of deposit as are acceptable to the Owner and having a value not less than the retainage that would otherwise be withheld from partial payment.

c. The Contractor shall enter into an escrow agreement satisfactory to the Owner.

d. The Contractor shall obtain the written consent of the surety to such agreement.

5. Construction warranty.

a. In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, workmanship, or design furnished, or performed by the Contractor or any subcontractor or supplier at any tier.

b. This warranty shall continue for a period of one year from the date of final acceptance of the work. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession. However, this will not relieve the Contractor from corrective items required by the final acceptance of the project work.

c. The Contractor shall remedy at the Contractor’s expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor’s expense any damage to Owner real or personal property, when that damage is the result of:
(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished by the Contractor.

d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

e. The Owner will notify the Contractor, in writing, within five (5) days after the discovery of any failure, defect, or damage.

f. If the Contractor fails to remedy any failure, defect, or damage within 30 days after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense. Upon request additional days may be approved by the RSI Director/Engineer.

g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall: (1) Obtain all warranties that would be given in normal commercial practice; (2) Require all warranties to be executed, in writing, for the benefit of the Owner, as directed by the Owner, and (3) Enforce all warranties for the benefit of the Owner.

h. This warranty shall not limit the Owner's rights with respect to latent defects, gross mistakes, or fraud.

6. **Project closeout.** Approval of final payment to the Contractor is contingent upon completion and submittal of the items listed below. The final payment will not be approved until the RSI Director/Engineer approves the Contractor's final submittal. The Contractor shall:

   a. Provide two (2) copies of all manufacturers' warranties specified for materials, equipment, and installations.
b. Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.

c. Complete final cleanup in accordance with subsection 40-08, FINAL CLEANUP.

d. Complete all punch list items identified during the Final Inspection.

e. Provide complete release of all claims for labor and material arising out of the Contract.

f. Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.

g. When applicable per state requirements, return copies of sales tax completion forms.

h. Manufacturer's certifications for all items incorporated in the work.

i. All required record drawings, as-built drawings or as-constructed drawings.


l. Equipment commissioning documentation submitted, if required.

Additional items may be added as necessary to address State requirements and specific project requirements. The intent of this section is to withhold final project payment until all necessary paperwork, project work, and cleanup of work/staging areas have been completed.

Article 38 – NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

Nondiscrimination Section Summary

1. General

2. Definitions
Equal Employment Opportunity
Affirmative Action Goals and Standards
EEO Officer
Working Environment
Dissemination of Policy
Recruitment
Personnel
Training and Promotion
Unions
Selection of Subcontractors
Records and Reports

1. General

a. By signing this contract the Contractor agrees to the terms and conditions of the following clause:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age or disability 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."

b. By signing this contract, the contractor further agrees to include in any contract that he enters into with a subcontractor the nondiscrimination clause as set forth above in paragraph 1, a of Section II above.

c. This contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, the Federal Labor provisions and the Equal
Employment Opportunity (EEO) provisions as contained in the contract specifications and bid documents.

d. Required Notices for All Contracts.

(1) The sponsor, in accordance with Title VI of the Civil Rights Act of 1964, hereby notifies all bidders that they must affirmatively insure that in any contract entered into pursuant to this advertisement, the contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21), as they may be amended from time to time.

(2) Each bidder will be required to comply with the affirmative action plan for equal employment opportunity prescribed by the OFCCP, United States Department of Labor, Regulations of the Secretary of Labor (41 CFR 60), or by other designated trades used in the performance of the contract and other nonfederally involved contracts in the area geographically defined in the plan.

(3) The proposed contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, and to the EEO clause.

2. Definitions • As used in these specifications the following Definitions shall apply.

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 (OFCCP), 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:
   (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
   (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
   (3) 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
   (4) American Indian or Alaskan native (all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

3. **Equal Employment Opportunity**: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
a. The contractor will work with the State Highway Agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

4. Affirmative Action Goals and Standards

a. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, he 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.

b. If the contractor is participating (pursuant to 41 CER 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, his 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 his obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which he 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 make good faith efforts to achieve the Plan’s goals and timetables.

c. The contractor shall implement the specific affirmative action standards provided in subparagraphs a through j of paragraph 4 of this Section II of the Contract. 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 he 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 his goals in each craft during the period specified.

d. In order for the non-working 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 program approved by the U.S. Department of Labor.

e. 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 his effort to achieve maximum results from his actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as set forth in this Section II.

f. 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.

g. The contractor, in fulfilling his obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g of these specifications, so as to achieve maximum results from his 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.
h. 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).

i. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligation g (i) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the contractor is a member and participant may be asserted as fulfilling any one or more of his obligations under g (i) through (16) 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, wakens a good faith effort to meet his 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.

j. The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

5. **EEO Officer:** The contractor shall designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for
monitoring all employment related activity to ensure that the company EEO policy is being carried out. Said EEO Officer must be capable of effectively administering and promoting an active contractor program of EEO and must be assigned adequate authority and responsibility to do so. Said EEO shall 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 number, 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.

6. Working Environment

The Contractor shall 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.

7. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To
ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Conduct periodic meetings of with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions and include a specific review of these items with personnel office employees, all minority female employees, and on-site supervisory personnel such as superintendents, general foremen, before the start of work and then not less often than once every a year, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer and shall include a specific review of the EOC Policy these items with 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.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees such as the City newspaper, annual report, etc.; and post it on bulletin boards accessible to all employees at each location where construction work is performed, and where potential applicants obtain or submit applicants for employment.
e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

f. Disseminate the contractor's EEO policy to unions and training programs, and request their cooperation in assisting the contractor in meeting his EEO obligations by including it in any policy manual and collective bargaining agreement.

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.

8. Recruitment: When advertising or soliciting for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor shall establish and maintain a current list of minority and female recruitment sources, establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration, provide written notification to minority and female recruitment sources and to community organizations when the contractor or his unions have employment opportunities available, and maintain a record of the organization's responses.
b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

d. 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.

e. 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-site and in other areas of a contractor's work force.

f. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

9. **Personnel Actions**: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type,
including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

9. Training and Promotion

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make

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full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. Develop on-the-job training opportunities and/or participate in training programs for the area, which expressly include minorities and women, including upgrading program 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 g (2) above.

e. Conduct, at least annually, an inventory and evaluation 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.

f. 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.

10. Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of
such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. 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 11246, as amended, nor the regulations promulgated pursuant thereto.

b. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

c. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

d. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

e. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without
regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

f. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, minority or female referral form a union, a recruitment source or community organization, and of what action was taken with respect to each 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 therefore, along with whatever additional actions the contractor may have taken.

g. 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 his obligations.

11. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

a. Nondiscrimination. The contractor, with regard to the work performed by him during the contract, shall not discriminate on the grounds of race, color, national origin age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
The contractor shall not participate either directly or indirectly in the
discrimination prohibited by Section 21.5 of the Regulations, including
employment practices when the contract covers a program set forth in
Appendix B of the Regulations.

b. The contractor shall notify all potential subcontractors and
suppliers of his/her EEO obligations under this contract.

c. Disadvantaged business enterprises (DBE), as defined in 49
CFR 23, shall have equal opportunity to compete for and perform
subcontracts which the contractor enters into pursuant to this contract. The
contractor will use his best efforts to solicit bids from and to utilize DBE
subcontractors or subcontractors with meaningful minority group and female
representation among their employees. Contractors shall obtain lists of DBE
construction firms from SHA personnel.

d. The contractor will use his best efforts to ensure subcontractor
compliance with their EEO obligations.

12. Records and Reports

The contractor shall keep such records as necessary to document compliance
with the EEO requirements. Such records shall be retained for a period of three
years following completion of the contract work and shall be available at reasonable
times and places for inspection by authorized representatives of the SHA and the
FHWA.

Reports (SF 257) may be required to be submitted to the area office of the
OFCCP. This requirement applies to contracts to be performed in areas
designated by the Department of Labor. Contractors should contact the area
office of the Department of Labor to see if this report is required.

b. Employer Information Report (SF 100). Contractors/subcontractors working on federally-assisted projects are
required to file with the sponsor annually, on or before March 31, complete and accurate reports on Standard Form 100 (Employer Information Report, EEO-1). The first such report is required within 30 days after award unless the contractor/subcontractor has submitted such a report within 12 months proceeding the date of award (the FAA or the Department of Labor can designate other intervals). This form is normally furnished based on a mailing list, but can be obtained from the Equal Employment Opportunity Commission (EEOC) - Survey Division, 2401 E St., NW, Washington, D.C. 20507 or by calling (202) 634-6750. The report is required if a contractor or subcontractor meets all of the following conditions:

(1) Nonexempt. If contractors/subcontractors are not exempt based on 41 CFR 60-1.5:

   (i) Number of Employees. Have 50 or more employees;

(2) Dollar Level. Has a contract or subcontract amounting to $50,000 or more; and

(3) Contractor/subcontractor. Is a prime contractor or first tier subcontractor. Some subcontractors below the first tier who work at the site are required to file if they meet the above requirements.

c. 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.

d. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

e. The records kept by the contractor shall document the following:
(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

f. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

Article 39 – NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are
maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

4. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes

Article 40 – PAYMENT OF PREDETERMINED MINIMUM WAGE
(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General

a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts
of wages and bona fide fringe benefits (or cash equivalents thereof) due at
time of payment. The payment shall be computed at wage rates not less than
those contained in the wage determination of the Secretary of Labor
(hereinafter "the wage determination") which is attached hereto and made a
part hereof, regardless of any contractual relationship which may be alleged
to exist between the contractor or its subcontractors and such laborers and
mechanics. The wage determination (including any additional classifications
and wage rates conformed under paragraph 2 of this Section IV and the DOL
poster (WH-1321) or Form FHWA-1495) 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. For the purpose of
this Section, contributions made or costs reasonably anticipated for bona fide
fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a)
on behalf of laborers or mechanics are considered wages paid to such laborers
or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof.
Also, for the purpose of this Section, regular contributions made or costs
incurred for more than a weekly period (but not less often than quarterly)
der 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 paragraphs
4 and 5 of this Section IV.

b. 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.
c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

   (1) The work to be performed by the additional classification requested is not performed by a classification in the wage determination;

   (2) The additional classification is utilized in the area by the construction industry;

   (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

   (4) With respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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 Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advice the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits

a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly wage equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. **Apprentices**

(1) 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractors registered program shall be observed.

(3) 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 journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees

(1) 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 DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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.

c. Helpers

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT)

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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, the SHA contracting officer may, after written notice to the contractor, 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.

7. **Overtime Requirements**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.
9. Withholding for Unpaid Wages and Liquidated Damages

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

Article 41 – STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records

   a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

   b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In
addition, for Appalachian contracts, the payroll records shall contain a
notation indicating whether the employee does, or does not, normally reside
in the labor area as defined in Attachment A, paragraph 1. Whenever the
Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each
subcontractor shall maintain records which show that the commitment to
provide such benefits is enforceable, that the plan or program is financially
responsible, that the plan or program has been communicated in writing to
the laborers or mechanics affected, and show the cost anticipated or the
actual cost incurred in providing benefits. Contractors or subcontractors
employing apprentices or trainees under approved programs shall maintain
written evidence of the registration of apprentices and trainees, and ratios
and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in
which any contract work is performed, to the SHA resident RSI Director a
payroll of wages paid each of its employees (including apprentices, trainees,
and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and
guards engaged on work during the preceding weekly payroll period). The
payroll submitted shall set out accurately and completely all of the
information required to be maintained under paragraph 2b of this Section V.
This information may be submitted in any form desired. Optional Form WH-
347 is available for this purpose and may be purchased from the
Superintendent of Documents (Federal stock number 029-005-0014-1), U.S.
Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/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 maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) That such 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 the Regulations, 29 CFR 3:

(3) That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. 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 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

**Article 42 – RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

   a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

   b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

   c. Furnish, upon the completion of the contract, to the SHA resident RSI Director on Form FHWA-47 together with the data required in
paragraph 1b relative to materials and supplies, a final labor summary of all
contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all
contract work or separate reports for the contractor and for each subcontract shall
be submitted.

**Article 43 – SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work
amounting to not less than 30 percent (or a greater percentage if specified
elsewhere in the contract) of the total original contract price, excluding any
specialty items designated by the State. Specialty items may be performed by
subcontract and the amount of any such specialty items performed may be deducted
from the total original contract price before computing the amount of work required
to be performed by the contractor's own organization (23 CFR 635).

   a. "Its own organization" shall be construed to include only
      workers employed and paid directly by the prime contractor and equipment
      owned or rented by the prime contractor, with or without operators. Such
      term does not include employees or equipment of a subcontractor, assignee,
      or agent of the prime contractor.

   b. "Specialty Items" shall be construed to be limited to work that
      requires highly specialized knowledge, abilities, or equipment not ordinarily
      available in the type of contracting organizations qualified and expected to
      bid on the contract as a whole and in general are to be limited to minor
      components of the overall contract.

2. The contract amount upon which the requirements set forth in
paragraph 1 of Section VII is computed includes the cost of material and
manufactured products which are to be purchased or produced by the contractor
under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and RSH Director/Engineer services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

**Article 44 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

All Bidders and Contractors of federally funded projects shall comply with the Disadvantaged Business Enterprise (DBE) requirements set forth below in Division III A of this contract.

**Article 45 – SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

**Article 46 – FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by RSI Directors, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:
"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented:

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

Article 47– IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water
Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L.
92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR
15) is not listed, on the date of contract award, on the U.S. Environmental
Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the
requirements of Section 114 of the Clean Air Act and Section 308 of the Federal
Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any
communication from the Director, Office of Federal Activities, and EPA, indicating
that a facility that is or will be utilized for the contract is under consideration to be
listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the
requirements of paragraph 1 through 4 of this Section X in every nonexempt
subcontract, and further agrees to take such action as the government may direct as
a means of enforcing such requirements.

Article 48 – BUY AMERICAN-STEEL AND MANUFACTURED PRODUCTS
FOR CONSTRUCTION PRODUCTS

1. The Aviation Safety and Capacity Expansion Act of 1990 provides that
preference be given to steel and manufactured products produced in the United
States when funds are expended pursuant to a grant issued under the Airport
Improvement Program. The following terms apply:

a. Steel and manufactured products. As used in this clause, steel
and manufactured products include (1) steel produced in the United States or
(2) a manufactured product produced in the United States, if the cost of its
components mined, produced or manufactured in the United States exceeds
60 percent of the cost of all its components and final assembly has taken
place in the United States. Components of foreign origin of the same class or
kind as the products referred to in subparagraphs b. (1) or (2) shall be treated as domestic.

b. Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.

c. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

2. The successful bidder will be required to assure that only domestic steel and manufactured products will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except those:

a. that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

b. that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or

c. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

3. Buy American Certificate. By submitting a bid/proposal under this solicitation, except for those items listed by the contractor below or on a separate and clearly identified attachment to this bid/proposal, the contractor certifies that steel and each manufactured product is produced in the United States (as defined in the clause Buy American - Steel and Manufactured Products For Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

Contractors may obtain from City of Inglewood list of articles, materials, supplies excepted from this provision.
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4. Required Form. The “Buy American Steel and Manufactured Products for Construction Contracts” form shall be submitted at the time of bidding. See Division III A for a copy of this required form.

**Article 49 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. **Instructions for Certification - Primary Covered Transactions:**

   (Applicable to all Federal-aid contracts - 49 CFR 29)

   By signing and submitting this proposal, the prospective primary participant is providing the certification set out below. See Division III A for a copy of the required form.

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

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

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

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

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

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

A participant in a covered transaction may rely upon a certification of a
prospective participant in a lower tier covered transaction that is not debarred,
suspended, ineligible, or voluntarily excluded from the covered transaction, unless it
knows that the certification is erroneous. A participant may decide the method and
frequency by which it determines the eligibility of its principals. Each participant
may, but is not required to, check the nonprocurement portion of the "Lists of
Parties Excluded From Federal Procurement or Nonprocurement Programs"
(Nonprocurement List) which is compiled by the General Services Administration.

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

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

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

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

   a. Are not presently debarred, suspended, proposed for debarment,
declared ineligible, or voluntarily excluded from covered transactions by any
Federal department or agency:
b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

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

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

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

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

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

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

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

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

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

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

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

**Article 50 – TRADE RESTRICTIONS CLAUSES TO BE INCLUDED IN ALL SOLICITATIONS, CONTRACTS, AND SUBCONTRACTS**

The Contractor or subcontractor, by submission of an offer and/or execution of Contract, shall complete the Trade Restrictions Form set forth in Division III A of this contract and certifies that he/she:
1. Is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

2. Has not knowingly entered into any Contract or subcontract for this Project with a person that is a citizen or a national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and/or

3. Has neither procured any product nor subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49CFR30.17, no Contract shall be awarded to a Contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the Project, the Federal Aviation Administration (FAA) may direct, through the sponsor, cancellation of the contract at no cost to the Government.

Further, the Contractor agrees that, if awarded a Contract resulting from the solicitation, he/she will incorporate this Provision for certification without modification in each Contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor unless he/she has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the sponsor if the Contractor learns that his/her certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the Contractor, if at any time he/she learns that his/her certification was erroneous by reason of changed circumstances.
This certification is a material representation of fact upon which reliance was placed when making the Award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the FAA may direct, through the sponsor, cancellation of the Contract or subcontract for default at no cost to the Government.

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

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**Article 51 – CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

The Bidder/Contractor shall complete the Certification Form regarding the use of contract funds for lobbying set forth in Division III A of this contract.

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 · 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.
DIVISION III - SELECTED STATUTORY PROVISIONS OF THE
STATE OF CALIFORNIA

Article 47 – GENERAL

The Contractor's attention is directed to selected statutory provisions of the
State of California set forth in the following Articles: Article 48 relating to
Discrimination in Employment, Article 49 relating to Apprentices on Public Works
Contracts, and Article 50 relating to the Payment of Prevailing Wages and Payroll
Records. The Contractor shall be responsible insuring that he/she and all of his/her
subcontractors are in full compliance with all of these statutory provisions.

Article 48 – DISCRIMINATION IN EMPLOYMENT

* Labor Code Section 1735
* Government Code – Sections 12926, 12926.1 and 12940

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of back pay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.
(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows: "Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

1. A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:
   (A) The function may be essential because the reason the position exists is to perform that function.
   (B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
   (C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

2. Evidence of whether a particular function is essential includes, but is not limited to, the following:
   (A) The employer's judgment as to which functions are essential.
   (B) Written job descriptions prepared before advertising or interviewing applicants for the job.
   (C) The amount of time spent on the job performing the function.
   (D) The consequences of not requiring the incumbent to perform the function.
   (E) The terms of a collective bargaining agreement.
   (F) The work experiences of past incumbents in the job.
   (G) The current work experience of incumbents in similar jobs.

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" means either of the following:
   (1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
   (2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:
(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes, but is not limited to, all of the following:

1. Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:
   (A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
   (B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
   (C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

2. Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

3. Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

4. Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

5. Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or
psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or
psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(1) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) "Reasonable accommodation" may include either of the following:
(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.
(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(p) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. "Sex" also includes, but is not limited to, a person's gender, as defined in Section 422.56 of the Penal Code.

(q) "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

(r) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
(s) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.
(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.
(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.
(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

12926.1. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life
activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in Cassista v. Community Foods (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a "limitation" rather than a "substantial limitation" of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section 12926, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.

(e) The Legislature affirms the importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the Americans with Disabilities Act of 1990.

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.
(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(5) Nothing in this part prohibits an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person in the election of officers of the
labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Nothing in this part prohibits an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological
inquiry of an employee, to make any inquiry whether an employee
has a mental disability, physical disability, or medical
condition, or to make any inquiry regarding the nature or
severity of a physical disability, mental disability, or medical
condition.

(2) Notwithstanding paragraph (1), an employer or employment
agency may require any examinations or inquiries that it can
show to be job-related and consistent with business necessity.
An employer or employment agency may conduct voluntary medical
examinations, including voluntary medical histories, which are
part of an employee health program available to employees at
that worksite.

(g) For any employer, labor organization, or employment
agency to harass, discharge, expel, or otherwise discriminate
against any person because the person has made a report pursuant
to Section 11161.8 of the Penal Code that prohibits retaliation
against hospital employees who report suspected patient abuse by
health facilities or community care facilities.

(h) For any employer, labor organization, employment agency,
or person to discharge, expel, or otherwise discriminate against
any person because the person has opposed any practices
forbidden under this part or because the person has filed a
complaint, testified, or assisted in any proceeding under this
part.

(i) For any person to aid, abet, incite, compel, or coerce
the doing of any of the acts forbidden under this part, or to
attempt to do so.

(j) (1) For an employer, labor organization, employment
agency, apprenticeship training program or any training program
leading to employment, or any other person, because of race,
religious creed, color, national origin, ancestry, physical
disability, mental disability, medical condition, marital
status, sex, age, or sexual orientation, to harass an employee,
an applicant, or a person providing services pursuant to a
contract. Harassment of an employee, an applicant, or a person
providing services pursuant to a contract by an employee, other
than an agent or supervisor, shall be unlawful if the entity, or
its agents or supervisors, knows or should have known of this
conduct and fails to take immediate and appropriate corrective
action. An employer may also be responsible for the acts of
nonemployees, with respect to sexual harassment of employees,
applicants, or persons providing services pursuant to a contract
in the workplace, where the employer, or its agents or
supervisors, knows or should have known of the conduct and fails
to take immediate and appropriate corrective action. In
reviewing cases involving the acts of nonemployees, the extent
of the employer's control and any other legal responsibility
which the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.
(1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.
Article 49 – EXCERPTS FROM THE CALIFORNIA LABOR CODE
RELATING TO APPRENTICES ON PUBLIC WORKS CONTRACTS

* Labor Code – Sections 1773.3, 1777.5, 1777.7

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship
program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (c).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any
work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would
jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(1) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount.

(2) At the conclusion of the 2 of the contributions in computing his or her bid for the contract. 002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury.
Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.7. (a)(1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.
Article 50 – PAYMENT OF PREVAILING WAGES AND PAYROLL RECORDS

* Labor Code – Sections 1771, 1772, 1774, 1775 and 1776

1771. Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than ten dollars ($10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

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(ii) The penalty may not be less than twenty dollars ($20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars ($30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to
halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request
by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall,

prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.
(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.
DIVISION III A

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

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Section 1 – DEFINITIONS

AADPLs mean the City’s Annual Anticipated DBE Percentage Levels.

DBEs means Disadvantaged Business Enterprises as defined in 49 CFR §26.5. DBE – A small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must be citizens (or lawfully admitted permanent resident of the United States and (1) any individual who recipient finds to be a socially and economically disadvantaged individual on a case by case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, women or any group found to be socially and economically disadvantaged by the Small Business Administration.

Cal-Trans DBE Agreement means the Disadvantaged Business Enterprise Race Conscious Implementation Agreement entered into between the California Department and the City of Inglewood and approved by the City Council on July 14, 2009.

Participants mean the City of Inglewood, Contractors, and Subcontractors of any tier that are receiving directing or indirectly federal financial assistance to participate in this Contract.

UDBEs mean an Underutilized Disadvantaged Business Enterprise. UDBEs fall into one of the following groups: African American, Asian Pacific American, Native American, and Women. It does not include Hispanic Males and Subcontinent Asian Males (includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka).

Section 2 – CITY OBJECTIVES FOR THE DBE PROGRAM

In order to receive federal financial assistance pursuant to Part 26 of the Code of Federal Regulations and the Cal-Trans DBE Agreement the City has established the following policy objectives for the DBE program:
a. To ensure that DBEs have an equal opportunity to receive and participate in DOT-assisted contracts.
   b. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
   c. To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
   d. To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
   e. To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
   f. To help remove barriers to the participation of DBEs in DOT-assisted contracts.
   g. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Section 3 – STATEWIDE AND CITY DBE GOALS

Bidders and Contractors are advised that, as required by Federal law, the State has established a statewide overall DBE goal. The City Federal-aid contract is considered to be part of the statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, Caltrans is tracking DBE participation on all Federal–aid contracts administered by cities/counties and other local agencies. The City is required to report to Caltrans on DBE participation for all Federal-aid contracts each year so that attainment efforts may be evaluated. Bidders and Contractors who obtain DBE participation on this project will assist the state in meeting its statewide overall DBE goal.

To provide assistance in meeting the DBE statewide goal, the City has included in this Contract a DBE Availability Advisory Statewide goal of 13.5% (6.75% Racial Neutral; 6.75% Racial Conscious portion for Black Americans, Native Americans, Asian Pacific Islanders and Women of all races). In addition, the City
has established its own DBE City goal of 17.50% (12% Racial Neutral: 5.5% Racial
Conscious portion for Black Americans, Native Americans, Asian Pacific Islanders
and Women of all races). It is not mandatory that you meet these goals and contract
award consideration will not be based on this advisory. However, all bidders and
contractors must complete and submit all DBE forms included in the Bid package
and this Contract.

Section 4 – RACE-NEUTRAL MEANS OF MEETING THE ANNUAL DBE GOALS

The federal regulations sets forth in 49 CFR §26.51(a) require that all
participants of Federal-aid projects must meet the maximum feasible portion of its
AADPL goal by using race-neutral means of facilitating DBE participation. Race-
neutral DBE participation includes any time a DBE wins a prime contract through
customary competitive procurement procedures, is awarded a subcontract on a
prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins
a subcontract from a prime contractor that did not consider its DBE status in
making the award (e.g., a prime contractor that uses a strict low-bid system to
award subcontracts.

The federal regulations sets forth in 49 CFR §26.51(b) provide that race-
neutral means of meeting the State and City’s annual DBE goals may include, but
are not limited to, the following:

a. Arranging solicitations, times for the presentation of bids,
quantities, specifications, and delivery schedules in ways that facilitate DBE,
and other small businesses, participation (e.g., unbundling large contracts to
make them more accessible to small businesses, requiring or encouraging
prime contractors to subcontract portions of work that they might otherwise
perform with their own forces);

b. Providing assistance in overcoming limitations such as inability
to obtain bonding or financing (e.g., by such means as simplifying the
bonding process, reducing bonding requirements, eliminating the impact of
surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

c. Providing technical assistance and other services;

d. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

e. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

f. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

g. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

h. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

i. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
Section 5 – RACE CONSCIOUS MEANS OF MEETING THE OVERALL STATEWIDE ANNUAL DBE GOAL

Participants must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of its AADPL that it does not project it is able to meet using race-neutral means.

Section 6 – QUOTAS

Neither the City, Bidder, Contractor or any other participant shall use quotas or set-asides in any way in the administration of this DBE Program.

Section 7 – NONDISCRIMINATION

The City shall take all necessary and reasonable steps under Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City’s DBE Implementation Agreement, as required by 49 CFR 26 and as approved by DOT, is incorporated by reference in this contract. Pursuant to 49 CFR §26.7 all participants agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the City and all participants shall take all necessary and reasonable steps in accordance with 49 CFR to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

Neither the City or any other participant shall exclude any person from participation in, deny any person the benefit of, or otherwise discriminate against anyone in connection with the award and performance of this contract or any contract covered by 49 CFR 26 on the basis of race, color, sex or national origin.

In administering the local agency components of the program neither the City or any other participant shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the
program with respects to individuals of a particular race, color, sex, or national origin.

Section 8 – NONDISCRIMINATION IN AWARD AND PERFORMANCE OF SUBCONTRACTS

This project is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” In order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the Agency encourages the participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with Federal Funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Section 9 – DBE REGULATIONS INCORPORATED BY THIS REFERENCE

Bidders and Contractor shall be fully informed in respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Attention is directed to the following matters:

a. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

b. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.

(1) A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces.
(2) The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

c. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

d. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:

(1) The Caltrans' "Civil Rights" website at:

(2) The Caltran's DBE Directory. This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

e. When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE 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.

(2) The materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer 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 DBE regular dealer, the firm must 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 DBE regular dealer in such bulk items as
petroleum products, steel, cement, gravel, stone, or asphalt without
owning, operating, or maintaining a place of business as provided in
this paragraph F.2. if the person both owns and operates distribution
equipment for the products. Any supplementing of regular dealers’ own
distribution equipment shall be a long-term lease agreement and not
on an ad hoc or contract-by-contract basis. Packagers, brokers,
manufacturers’ representatives, or other persons who arrange or
expedite transactions are not DBE regular dealers within the meaning
of this Paragraph F.2.

(3) If the DBE is neither a manufacturer nor a regular
dealer, count only the entire amount of fees or commissions charged for
assistance in the procurement of the materials and supplies, or fees or
transportation charges for the delivery of materials or supplies
required on a job site, provided the fees are reasonable and not
excessive as compared with fees charged for similar services.

f. When reporting DBE participation, bidders may count the
participation of DEB trucking companies as follows:

(1) The DBE must be responsible for the management and
supervision of the entire trucking operation for which it is responsible
on a particular contract.
(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

(3) The DBE 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.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(6) For the purposes of this paragraph G, a lease must indicate that the DBE 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 DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

g. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

Section 10 – AWARD AND EXECUTION OF CONTRACT

A "LOCAL AGENCY BIDDER - DBE INFORMATION" form will be included in the Contract Documents to be executed by the successful bidder. The purpose of this form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.
The successful bidder’s “LOCAL AGENCY BIDDER – DBE INFORMATION”
form should include the names, addresses and phone numbers of DBE firms that
will participate, with a complete description of work or supplies to be provided by
each, and the dollar value of each DBE transaction. When 100 percent of a contract
item of work is not to be performed or furnished by a DBE, a description of the exact
portion of that work to be performed or furnished by that DBE should be included in
the DBE information, including the planned location of that work. A successful
bidder certified as a DBE should describe the work it has committed to performing
with its own forces as well as any other work that it has committed to be performed
by DBE subcontractors, suppliers and trucking companies.

The successful bidder is encouraged to provide written confirmation from
each DBE that the DBE is participating in the contract. A copy of a DBE’s quote
will serve as written confirmation that the DBE is participating in the contract. If a
DBE is participating as a joint venture partner, the successful bidder is encouraged
to submit a copy of the joint venture agreement.

A “LOCAL AGENCY BIDDER - DBE INFORMATION” form should be
completed and returned to the City by the successful bidder with the executed
contract and contract bonds.

A “Payee Data Record” form will be included in the contract documents to be
executed by the successful bidder. The purpose of the form is to facilitate the
collection of taxpayer identification data. The form shall be completed and returned
to the Agency by the successful bidder with the executed contract and contract
bonds. For the purposes of the form, payee shall be deemed to mean the successful
bidder. The form is not to be completed for subcontractors or suppliers. Failure to
complete and return the “Payee Data Record” form to the Agency as provided herein
will result in the retention of 31 percent of payments due the contractor and
penalties of up to $20,000. This retention of payments for failure to complete the
“Payee Data Record” form is in addition to any other retention of payments due the Contractor.

**Section 11 – SUBCONTRACTOR AND DBE RECORDS**

The Contractor shall maintain records showing the name and business address of each first tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials, and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on “Final Report–Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors” Form CEM-2402 (F) and certified correct by the Contractor or the Contractor’s authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of $10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE subcontractor, DBE vendor of materials, and DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all
trucks used during that month. This documentation shall be submitted on “Monthly DBE Trucking Verification” Form CEM-2404(F).

Section 12 – DBE CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, “Disadvantaged Business Enterprises (DBE) Certification Status Change” Form CEM-2403(F) indicating the DBEs’ existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance.

Section 13 – SUBCONTRACTING

The provisions in the Disadvantaged Business Enterprise (DBE) requirements set forth in the Contract Documents shall apply to all Prime Contractors and First Tier Subcontractors. The Contractor shall perform with the Contractors own organization contract work amounting to not less than 50 percent of the original contract price, notwithstanding any Federal Aid Construction Contracts requirements that might otherwise require that the Contractor perform a lesser 30 percent of the original contract work with the Contractor’s own organization.

Section 14 – PERFORMANCE OF SUBCONTRACTORS

The subcontractors listed by the Contractor in conformance with Section 2-1.054, “Required Listing of Proposed Subcontractors,” of the Standard Specifications, shall perform the work and supply the materials for which they are
listed, unless the Contractor has received prior written authorization to perform the
work with other forces or to obtain the materials from other sources.

The Contractor should notify the Engineer in writing of any changes to its
anticipated DBE participation. This notice should be provided prior to the
commencement of that portion of the work.

Section 15 – PROMPT PROGRESS PAYMENTS 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. This provision
applies to both DBE and non-DBE subcontractors.

Section 16 – 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. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

Section 17–ADDITIONAL DBE INFORMATION – ADVERTISEMENTS AND OUTREACH

DBE prime contractors or subcontractors may seek out minority subcontractors equally in the City of Inglewood as in other outlying areas of Los Angeles County. Advertisements for prime and subcontractors may be placed equally in newspapers, the Chamber of Commerce, and other journals directly targeted to women and minorities. Following is a sample list.

Inglewood Chamber of Commerce
330 E. Queen Street
Inglewood, CA 90301
(310) 677-1121

Inglewood Today
101 N. La Brea Avenue,
Suite 603
Inglewood, CA 90301
(310) 330-0063

Inglewood News
312 E. Imperial Avenue
El Segundo, CA 90245
(310) 322-1830

L. A. Opinion
411 W. 5th Street
Los Angeles, CA 90013
(213) 622-8332
L. A. Bay News Observer
1219-20 Street
Bakersfield, CA 93309
(310) 674-9390
Attn: J. Coley, Jr.

WAVE
2621 W. 54th Street
Los Angeles, CA 90043
(323) 290-3000 Ext. 201 or 202
Attn: Ruby Thomas

Inglewood Crusaders
11633 Hawthorne Blvd., Suite 11
Hawthorne, CA 90250
(310) 673-5555 or (213) 777-1345
Attn: Kim or Maggi

For a fee, prime contractors can consult with minority and women outreach organizations to assist with advertisements and referrals, e.g., Inglewood-based business, REYNA Group at (310) 701-6048.

As part of the Good Faith Efforts requirements, the City can no longer accept relatives’ (wife, sister, mother, in-law, half-brother, half-sister, grandparents, etc.) subcontractors as part of the DBE requirement.
PART 2: DBE FORMS AND OTHER FORMS REQUIRED FOR ALL FEDERALLY FUNDED PROJECTS

DBE FORMS

Notwithstanding any contrary time deadline language on the provided forms, Bidders/Contractors must submit with its bid all of the forms set forth below that have been checked with an "X". Additional Forms required for this project have been checked with an "XX". For Exhibit 17 – Final Report, the successful Bidder shall provide to the City all information needed for the City to fill out this form upon completion of the project.

- X Disadvantaged Business Enterprise (DBE) Utilization
- X Assurance of Disadvantaged Business Enterprise (DBE) Participation
- X Local Agency Bidder UDBE Commitment (Construction Contracts (Exhibit 15·G1) – with Instructions
- X Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15·G2) – with Instructions
- X DBE Information – Good Faith Efforts (Exhibit 15·H)
- - Local Agency Proposal UDBE Commitment (Consultant Contracts) (Exhibit 10·01) – with Instructions
- - Local Agency Proposal DBE Commitment (Consultant Contracts) (Exhibit 10·02) – with Instructions
- XX Final Report Utilization of Disadvantaged Business (Exhibit 17·F) – with Instructions
- XX Final Report – Utilization of Disadvantaged Business (DBE), First-Tier Subcontractors (CEM-2402F) – with Instructions
- - Monthly DBE Trucking Verification (CEM-2404(F)) – with Instructions
- X Letter of Intent (For each DBE Subcontractor)
OTHER FORMS REQUIRED FOR ALL FEDERALLY FUNDED PROJECTS

NOTE: Not withstanding any contrary time deadline language on the provided forms, Bidders/Contractors must complete at the time of bid submittal all of the forms set forth below that have been checked with an “X”. Additional Forms required for this project have been checked with an “XX”.

- X Federal Requirements for Federal Aid Construction Projects
- X Equal Employment Opportunity Certification
- X Noncollusion Affidavit
- X Nonlobbying Certification for Federal-Aid Contracts
- X Disclosure of Lobbying Activities
- X Award and Execution of Contract
- X Disbarment and Suspension Certification
- X Suspension & Disbarment Requirements for all Contracts over $25,000
- X Trade Restriction Clauses to be included in all Solicitations, Contracts, and Subcontracts
- X Buy American Steel and Manufactured Products for Construction Contracts
- Office of Labor Relations Davis-Bacon Enforcement – Information only
DIVISION III B – MISCELLANEOUS PROVISIONS

Article 51 – EXECUTION OF CONTRACTS

The Contractor shall execute a written contract with the City and furnish good and approved bonds in accordance with the provisions 11 of Division 1 of this Contract within the time stated in the bid documents. If the Contractor fails or refuses to enter into the contract or to conform to any of the stipulated requirements in connection therewith, the bid bond, check or cash guaranty shall become the property of the City and the bid award shall be annulled and, in the discretion of the City, an award may be made to the bidder whose proposal is next most acceptable to the City. Such bidder shall fulfill every stipulation embraced herein as if he/she were the party to whom the first award was made. A corporation to which an award is made will be required, before the contract is finally executed, to furnish evidence of its corporate existence, of its rights to do business in California and of the authority of the officer signing the contract and bonds for the corporation to so sign.

This Agreement may be executed in counterparts, and when each party hereto has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties hereto.

Article 52 – RELATIONSHIP OF PARTIES; SUBCONTRACTS

No agency relationship between Contractor and City is intended or created by this Agreement. Contractor is not authorized and shall not at any time or in any manner represent that it is an agent, servant, or employee of City; it being expressly understood that Contractor is and at all times shall remain a wholly independent contractor.

The RSI Director shall have the authority to approve changes of, or additions of, subcontractors. Such permission shall be requested in writing and must be
approved in writing. Nothing contained in the contract documents shall be held to create a direct contractual relationship between any subcontractor and the City.

No subcontractor will be recognized as such: all persons engaged in the work of construction will be considered as employees of the Contractor, and the Contractor will be held responsible for their work, which shall be subject to all the provisions of the Contract Documents.

Article 53 – NON-ASSIGNABILITY

The expertise and experience of Contractor are material considerations for this Agreement. City has an interest in the qualifications of and capability of the company which will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion or interest in this Agreement or the performance of any of Contractor’s duties or obligations under this Agreement without the prior written consent of the City which may be granted or withheld at City’s sole discretion. Any attempted unauthorized assignment shall be ineffective, null and void, no monies due or to become due hereunder, nor any claim hereunder, may be assigned and any attempted assignment and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. If properly assigned, the Construction Contract and other Contract Documents shall be binding upon City and Contractor and their respective successors and assigns.

Article 54 – NO THIRD PARTY RIGHTS

Nothing contained in the Contract Documents is intended to make any person or entity who is not a signatory to the Construction Contract a third-party beneficiary of any right created by the Contract Documents or by operation of Applicable Laws. Nothing stated herein or elsewhere in the Contract Documents shall be interpreted as obligating City to exercise any right or perform any duty for the benefit of any Homeowner nor shall City be liable or responsible to any
Homeowner for any decisions, approvals or other actions or omissions related to City’s performance or non-performance of any right or obligation under the Contract Documents or related to the Work.

**Article 55 – RIGHTS AND REMEDIES; CLAIMS AND PROTESTS**

Duties and obligations imposed by the Contract Documents and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by Applicable Law.

If the Contractor considers any work demanded of them to be outside the requirements of the contract, or considers any instruction, ruling, or decision of the RSI Director to be unfair, the Contractor shall within 10 working days after any such demand is made, or any such instruction, ruling, or decision is given, file a written protest with the RSI Director stating the nature of the protest and the reasons therefore.

Except for such protests and objections as are made of record in the manner and within the time above stated, the Contractor shall be deemed to have waived and does hereby waive all claims for any extra work, damages, and extensions of time on account of such demands, instructions, rulings, and decisions of the RSI Director.

Upon receipt of any such protest from the Contractor, the RSI Director will review the demand, instruction, ruling, or decision objected to and will, within 30 calendar days, advise the Contractor, in writing, of his/her final decision, which shall be binding upon all parties unless, within 10 working days after the date of said final decision, the Contractor shall file with the Council formal protest against said final decision of the RSI Director. The Council will then consider and render its final decision on any such protest within 30 calendar days after receipt of such protest. The decision of the City Council shall be final and binding upon all parties to the dispute.

///
Claims Based on Differing Site Conditions. Save and except as provided in this paragraph, Contractor agrees to solely bear the risk of Loss and Delay due to concealed or unknown conditions, surface or subsurface, at a Site or in Existing Improvements at the Site, without adjustments to the Contract Sum or Contract Time. If Contractor encounters conditions it believes constitutes Differing Site Conditions, then notice of such conditions shall, before such conditions are disturbed, be promptly reported to RSI Director within twenty-four (24) hours by a written notice stating a detailed description of the condition encountered. Failure to submit a timely written notice to the RSI Director shall be deemed a waiver of any right by Contractor for an adjustment to the Contract Sum or Contract Time by reason of such conditions. The City shall treat any time written notice as a claim for damages and shall be resolved in accordance with this Article 55 of the Contract.

Article 56 – WAIVER

Provisions of the Contract Documents may be waived by City only in writing signed by the RSI Director stating expressly that it is intended as a waiver of specified provisions of the Contract Documents.

A waiver by either party to this agreement of any breach of any term, covenant, or condition contained in the Contract Documents shall not constitute a waiver of any other term, condition, or covenant contained in the Contract Documents, nor shall it be deemed to be a waiver of any subsequent breach or violation of the same or any provision of this Agreement other term, covenant, or condition contained herein whether of the same or a different character. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

Article 57 – NO NUISANCE

Contractor shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of Work.

///
Article 58 – OWNERSHIP OF DOCUMENTS

All documents provided by the City to the Contractor to assist in the provision of the services contemplated by this Agreement, as well as all documents prepared, developed or discovered by the Contractor in the course of providing any services pursuant to this Agreement including but not limited to plans, drawings, sketches, original studies, surveys, reports, data, notes, computer files, files and all other documents are and shall remain the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, the Contractor shall give the City all such documents, including but not limited to plans, drawings, sketches, original studies, surveys, reports, data, notes, computer files, files and all other such documents. All plans and specifications prepared under this Agreement shall become the property of the City upon completion of the work or termination of the Agreement.

Article 59 – RELEASE OF CONFIDENTIAL AND OTHER INFORMATION

All information gained or work product produced by the Contractor in performance of this Agreement shall be considered confidential, unless such information is either (1) in the public domain; or (2) information proprietary to Contractor that was in the possession of Contractor prior to its preparing its Bid. Contractor shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the City Administrator, except as may be required by law.

Contractor, its officers, employees, agents or subs, shall not, without prior written authorization from the City Administrator or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not //
be considered voluntary, provided the Contractor gives the City notice of such court order or subpoena.

If the Contractor, or any officer, employee, agent or sub-contractor of the Contractor, provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from the Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor’s conduct.

The Contractor shall promptly notify the City should the Contractor, its officers, employees, agents or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed hereunder. The City retains the right, but has no obligation, to represent the Contractor or be present at any deposition, hearing or similar proceeding. The Contractor agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by the Contractor. However, this right to review any such response does not imply or mean the right by the City to control, direct, or rewrite said response.

Article 60 – NON-DISCRIMINATION

The Contractor shall not discriminate, in any way, against any employee or other person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement. Any contractor for public works violating this section is subject to all the penalties imposed by law for a violation of this section.

Article 61 – CONFLICTS; PROHIBITED INTERESTS

Contractor agrees not to accept any employment or representation which will, or is likely to, make Contractor “financially interested” (as provided in California
Government Code Section 1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained in connection with the Project.

No official or employee of City is authorized in such capacity and on behalf of City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, RSI Director/Engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, that shall become directly or indirectly interested financially in the Construction Contract or in any part thereof. No officer, employee, architect, attorney, RSI Director or inspector of or for City is authorized in such capacity and on behalf of City to exercise any executive, supervisory or other similar functions in connection with construction of the Project that shall become directly or indirectly interested financially in the Construction Contract or in any part thereof. Contractor shall receive no compensation and shall repay City for any compensation received by Contractor hereunder, should the Contractor or any of the Subcontractors aid, abet or knowingly participate in violation of this paragraph.

**Article 62 – CONTRACT INTERPRETATION**

The parties waive any benefits from the principles of contra proferentum and interpreting ambiguities against drafters. No party shall be deemed to be the drafter of this Agreement, or of any particular provision or provisions, and no part of this Agreement shall be construed against any party on the basis that the particular party is the drafter of any part of this Agreement.

Article titles, paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereto.

**Article 63 – EXTENT OF AGREEMENT**

The Contract Documents, including any addendums or exhibits, represents the entire, complete, final and exclusive expression of the parties with respect to the
matters addressed therein and supersedes all other Agreements or understandings, whether oral or written, entered into between the Contractor and the City prior to the execution of this Agreement. No statements, representations or other Agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing and duly executed by the parties or their authorized representatives.

**Article 64 – CHANGES, AMENDMENTS AND MODIFICATIONS**

No change, amendment or modification to the Contract Documents shall be effective unless by written instrument signed by both City and Contractor and formally approved or ratified by the City Council in accordance with the requirements of the Contract Documents and Applicable Laws.

**Article 65 – SEVERABILITY**

In the event that any part, term, portion, provision, condition or covenant of the Contract Documents, or the application thereof to any party or circumstance, is held to be illegal, invalid, void or in conflict with any Applicable Law, or otherwise be rendered unenforceable or ineffectual by any court of competent jurisdiction, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Law as long as the invalid provision does not render the Contract Documents meaningless with regard to a material term in which event the entire Agreement shall be void. If such part, term, portion or provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**Article 66 – SURVIVAL**

All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by Contractor of an obligation that extends beyond the termination of the Construction Contract or Final Completion of
the Residential Work or Project Work, including, without limitation, Contractor's obligations of, or relating to, indemnification, insurance, confidentiality, ownership of documents, retention and audit of books or records, warranties and guaranties and resolution of Claims shall be deemed to survive either termination of the Construction Contract or Final Completion of the Project Work and Project Work.

Article 67 – FEDERAL GRANT REQUIREMENTS

In the event of a federal grant or other federal financing participation in the funding of this Project, Contractor shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under the Construction Contract or other Contract Documents. Contractor shall comply with all applicable federal grant requirements including, without limitation, those pertaining to work hours, overtime compensation, non-discrimination, and contingent fees.

Article 68 – PROVISIONS REQUIRED BY APPLICABLE LAW

Each and every provision of law and clause required by Applicable Laws to be inserted in the Construction Contract or other Contract Documents shall be deemed to be inserted in these General Conditions and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party these General Conditions shall forthwith be amended by the parties to the Construction Contract to make such insertion or correction.

Article 69 – GOVERNING LAW; VENUE

The interpretation and enforcement of this Agreement the Construction Contract and other Contract Documents and of the performance by parties hereunder shall be governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles, Superior Court, and Southwest District,
located at 825 Maple Avenue, Torrance, California 90503-5058. In the event of
litigation in the United States District Court, venue shall lie exclusively in the
Central District of California, in Los Angeles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement
as of the date first above written.

CITY OF INGLEWOOD

__________________________________________
MAYOR
JAMES BUTTS, JR.

ATTEST:

__________________________________________
YVONNE HORTON
CITY CLERK

APPROVED AS TO FORM:

__________________________________________
KENNETH CAMPOS
CITY ATTORNEY

NAME OF CONTRACTOR

__________________________________________
NAME

__________________________________________
SURETY BOND AGENT
ATTACHMENT NO. 2
RESOLUTION NO. ______


WHEREAS, the City of Inglewood Department of Residential Sound Insulation provides residential sound insulation services to eligible homeowners within the City; and

WHEREAS, the Residential Sound Insulation Department recommends the award of a Architectural / Engineering Design Services contract for a capital project funded by Los Angeles World Airports (LAWA) and the Federal Aviation Administration (FAA); and

WHEREAS, project funds are available from existing Residential Sound Insulation grant funds awarded by LAWA and the FAA; and

WHEREAS, the contract will be budgeted in the current FY 2018/2019 Budget; and

WHEREAS, a budget amendment is necessary to account for this transaction;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Inglewood, California, that the Fiscal Year 2018/2019 City Budget be amended to reflect the adjustments as shown in Exhibit “A”.

BE IT FURTHER RESOLVED, that the City Clerk shall certify to the adoption of this resolution and the same shall be in full force and effect immediately upon adoption May 2019.

James T. Butts, Jr.
California

ATTEST:

Yvonne Horton
(SEAL)
# Exhibit A

## Budget Change Request

For: Agreement with FHJ Construction Inc., to provide residential sound insulation work for the City's Residential Sound Insulation Department

Date of Request: 7-May-19

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ATTACHMENT NO. 3
**BIDDER'S PROPOSAL AND STATEMENT**

CITY OF INGLEWOOD, LOS ANGELES COUNTY, CALIFORNIA
"RESIDENTIAL SOUND INSULATION PHASE XV, GROUP 23"

PROPOSAL

To the City of Inglewood
One Manchester Boulevard
Inglewood, CA 90301

The undersigned declares that he/she has carefully examined the location of the proposed work and has otherwise satisfied himself/herself as to the nature and location of the work, and is fully informed as to all conditions and matters which can in any way affect the work or cost thereof, that he/she has examined the Specifications and Plans, and has read the accompanying "INSTRUCTIONS TO BIDDERS" and hereby agrees to provide the following:

To furnish all labor, materials, equipment, transportation, and services and to do all the work required for the "Residential Sound Insulation Phase XV, Group 23" and in strict conformity with the plans specifications and at the following lump sum price:

<table>
<thead>
<tr>
<th>NO.</th>
<th>LOCATION</th>
<th>General Conditions</th>
<th>Architectural</th>
<th>HAZMAT</th>
<th>Mechanical</th>
<th>Structural</th>
<th>Shutter Allowance</th>
<th>Mini Blind Allowance</th>
<th>Security Screen Door Allowance</th>
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**TOTALS:**

- General Conditions: $37,280.00
- Architectural: $184,024.08
- HAZMAT: $317,127.41
- Mechanical: $26,910.00
- Structural: $ -
- Shutter Allowance: $ -
- Mini Blind Allowance: $ -
- Security Screen Door Allowance: $ -
- Total Allowance: $0.00
- TOTAL UNIT BID: $565,321.49
# BIDDER'S PROPOSAL AND STATEMENT

## UNIT BID ITEMS

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Description</th>
<th>Per Dwelling</th>
<th>Each</th>
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## TOTAL BID WRITTEN IN WORDS

Five Hundred Sixty Five Thousand Seven Hundred Seventy-one 49/100 Dollars

## TOTAL BID IN FIGURES

$565,771.49

In case of discrepancy between the total bid written in words and the total bid in figures, the words shall prevail.

Notice: Bidders will not be released due to errors.

The receipt of the following addenda to the drawings and specifications, which are all such addenda received by this bidder, is acknowledged.

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Date</th>
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<tbody>
<tr>
<td>1</td>
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<tr>
<td></td>
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</tr>
</tbody>
</table>

**TIME FOR COMPLETION**
BIDDER'S PROPOSAL AND STATEMENT

The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within Ninety Three (93) working days from the Project Start Date stated in the Notice to Proceed.

This bid is based upon completing the work within the following milestone dates and duration:

- Proposed Project Start Date: 5/1/19
- Proposed Project Work Completion Date: 9/12/19
- Proposed Contract Completion Date: 5/1/20
- Reimbursement Date: N/A
- Reimbursement Date less 15 days: N/A
- Working Days: 93
- Calendar Days: N/A

Contractor confirms that the 93 Working Days and Calendar Days set forth, including any interim completion dates, is reasonable and represents that he/she is capable of completing the Work within such time in strict accordance with the requirements set forth in this Contract.

Enclosed is a Bidder's Bond, certified check or cashier's check number N/A on the N/A bank, which is not less than ten percent (10%), as a guarantee that the undersigned will enter into the contract if awarded to the undersigned. The undersigned further agrees that in case of default in executing the required contract with necessary bonds and insurance, within the time limits above specified, said bond or check and the money payable therein shall be forfeited to and become the property of the City of Inglewood, State of California.

SIGNATURE OF BIDDER: __________________________ TEL NO: 323-696-9979

BUSINESS ADDRESS: 11156 S. Main St. Los Angeles, CA 90061
BIDDER'S PROPOSAL AND STATEMENT

CONTRACTOR'S LICENSE: HHJ Construction Inc.
NUMBER & EXPIRATION: 1019385 / 10/31/20
TYPE OF LICENSE: B

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 27th day of March, 2019

Old Republic Surety Company
534 E. Badillo St.
Covina, CA 91723
626-859-1000 / 626-859-1001

SURETY COMPANY'S NAME

CONTRACTOR'S SIGNATURE
ATTACHMENT NO. 4
ATTACHMENT NO. 5
TO: ALL PROSPECTIVE BIDDERS
RE: RESIDENTIAL SOUND INSULATION PROGRAM
PHASE 15, GROUP 23
ADDENDUM No. 1

This addendum consists of one (1) item as listed below:

DRAWINGS REVISED AND REISSUED

<table>
<thead>
<tr>
<th>Item No. 1</th>
<th>Volume II Drawings &amp; Schedules</th>
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<tbody>
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<td>Remove Existing Site Plan sheets and Replace with new sheets provided; D01.1A, D02.1A, D03.1A, D04.1A, D05.1A, D06.1A, D07.1A, D08.1A, D09.1A, D10.1A, D11.1A, D12.1A, D13.1A, D14.1A, D15.1A, D16.1A, D17.1A &amp; D18.1A</td>
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</tbody>
</table>

No. of Pages Affected: 18

Approved:

[Signature]
Bettye R. Gaffith
RSI Director

Reviewed by:

[Signature]
Anthony Barbarin
Senior Construction Manager