



REQUEST FOR PROPOSAL

San Diego American Indian Health Center

Issue Date: Thursday January 9, 2020

Title: ADA Site/ Door hardware/ Elevator Upgrades and HVAC Replacement Project

Owner Issuing & Address: San Diego American Indian Health Center
Administrative Offices
2602 First Avenue, Suite 105
San Diego, CA 92103

Period of Contract: Anticipated completion date is May 5, 2020.

Contract Type: Build/Construction

Contract Amount: Not to exceed Two Hundred Eighty-eight Thousand Five Hundred Fifty-eight Dollars and no cents (\$288,558.00).

PURPOSE

The purpose of the Request for Proposal ("RFP") is to solicit Bids for the purposes of entering into a contract through competitive negotiations for the professional services of a Build General Contractor ("Contractor") authorized to do business in the State of California, is in good standing with the State and who has experience in performing the type of project described within the body of this document.

GENERAL INFORMATION AND SCOPE OF WORK

ADA Site/ Door hardware/ Elevator Upgrades and HVAC Replacement Project is located at the First and Maple Office Building 2602 First Avenue San Diego, CA. 92103. The Owner's property is comprised of multiple buildings on a contiguous site comprised of three lots. Two buildings identified as Building 1 and Building 2 are involved in the project activities. Building 1 is on the corner of Maple & First and houses healthcare suites for Mental Health and Primary Medical Care. Building 2 is on First and house Dental clinic and Administration Offices. All proposed Project activities will take place within both buildings for door hardware upgrades and each building's roof for HVAC upgrades and Building 1 Parking Lot.

Bid Documents:

- Bid documents consist of SDAIHC Planning Documents dated December 19, 2019 identified as: A0.1, C1.0, C1.1, C1.2, A1.1, A1.2, A1.3, A1.3A, A1.3B, & A1.3C. Documents may be obtained from SDAIHC office.
- Bidders are required to utilize the SDAIHC Planning Documents and provide any additional structural, mechanical, electrical or plumbing information deemed necessary to secure any required permits from the City of San Diego for construction of the work. Bidders to include permitting processing and costs in their scope of work.

Improvements to the facility will be completed as follows:

ADA Upgrades:

1. ADA site improvement upgrades to project site, including parking lot and access to building entries. Project requires concrete & CMU wall & footing demolition. Placement of new concrete steps/ walks (to match existing topping reinforced concrete of up to 3 ¼" concrete over existing concrete walkway), railings and 3" asphalt over Class II 4" base, slurry seal lot, restriping, wheel stops and signage for accessible parking area.
2. Provide ADA compliant Door Hardware as identified in all patient care areas. This is a replacement in kind to remove orbit type hardware with lever accessible type hardware. Contractor will assess each door and hardware type to determine if locked, passage, etc. and/or special type at storefront installations.

Elevator upgrades:

3. Upgrade existing OTIS elevator to modify travel distance to coordinate first floor level access to new adjacent sidewalk. Adjust and or replace external door and frame as required for change in level at first floor. Provide patching as required to return exterior stucco plaster to original condition.

HVAC mechanical equipment replacement:

4. Replace 13 HVAC roof and deck mounted equipment "in kind" with new units to match existing size and performance ratings. Locations are identified on the provided bid documents. Provide code compliant connections for power, gas and outside air. Provide anchorage and roof patching as required for each unit. Not all units may be replaced under this contract. Bidder to provide unit cost for each of the 13 HVAC units identified. SDAIHC reserves the right to award all or a portion of the HVAC unit replacements.

- Matching of like products is acceptable.
- Must be consistent with the Bid Documents provided in the plan set attached to this Request for Proposal.
- All of these items are to be coordinated, constructed with a Licensed General Contractor who has experience with Community Development Block Grant (CDBG) funded projects of similar scope and size. Permit costs will be taken care of by the Contractor. Additionally, experience with public works projects and build experience are required.

A MANDATORY PRE-BID MEETING will be held on **Friday January 17, 2020 at 10:00 am PST** at 2602 First Avenue, San Diego, CA 92103. All Bidders are required to attend this meeting to be qualified and ensure their understanding of the site conditions, scope of work and Owner's Bidding and contracting requirements.

ALL BID DOCUMENTS ARE DUE ON OR BEFORE Monday February 10, 2020 no later than 2:00 pm PST, at the 2nd Floor Conference Room: to the attention of Sean Ayersman, CISSP Chief Information Officer; 2602 First Avenue San Diego, CA 92103. All Bids to be considered must be sealed, labeled SDAIHC BID and submitted in hard copy form with one (1) original and two (2) copies.

Sealed Bids will be opened on Monday February 10, 2020 at 2:30 pm PST and will be read aloud to the public in attendance at the 2nd Floor Conference Room 2602 First Avenue San Diego, CA 92103.

Should a perspective Contractor fail to submit a Bid on or before the appointment time at the address shown above, the Owner will not open the Bid and in such an event, the Owner will not consider the Bid regardless of the reason for the late submission. All RFP documents will be labeled to indicate the date and time of receipt by the Owner.

BID PROTESTS

Any protests that arise to the bid process must be submitted no later than 10 calendar days from the opening date of sealed bids. Protests received will be given a 10-day resolution time, and the process will continue as stated in the RFP.

A. REJECTION FOR IRREGULARITIES

- a. Bids may be rejected if they show any alterations of any form. Additions not called for, conditional or alternative bids, incomplete bids, erasures, or irregularities of any kind. SDAIHC may waive minor irregularities based in review an additional evaluation.

B. REJECTION, CANCELATION & NON-BINDING NATURE OF BIDS

- a. SDAIHC reserves the right to accept or reject any or all bid, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the IFB.
- b. While it is the intent of SDAIHC to award to the successful bidder, this solicitation does not oblige SDAIHC to enter into agreement. SDAIHC reserves the right to cancel this IFB at any time. No obligation, either expressed or implied, exists on part of SDAIHC to make an award.
- c. This IFB, and any interview process if requires, shall in no way be deemed to create a binding contract or agreement of any kind between SDAIHC and the proposers.

ADDITIONAL INFORMATION

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

Each Bid submitted must explicitly state that this Bid has been prepared to include compliance with the following:

- Agrees to comply with the Owner's signed agreement with the City of San Diego (a copy is attached and made a part of this IFB);
- Section 3 of the Housing and Urban Development (HUD) Act (12 U.S.C. 1701u and 24 FR Part 135);
- Federal Labor Standards Provisions HUD 4010 Form;
- Labor Code Sections 1720-1743, 1770-1784, 1810-1815, 1860-1861, 3070-3098, and 4100-4114;
- Davis Bacon Act General Wage Decision Number: CA20200001 01/03/20 Mod 0
- State Prevailing Wage Determination Decision Number: SDI 2019-2

Please note, any changes to this Invitation for Bid will be issued to Contractors in attendance at the Job Walk in writing or via email as an official addendum.

FEDERAL DAVIS-BACON ACT COMPLIANCE. Sub-Recipient shall comply, and require its Subcontractors to comply, with the Davis-Bacon Act (40 USC §§ 3141-3144 and §§ 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5), for construction contracts in excess of \$2,000. In accordance with the Federal law, Sub-Recipient shall ensure, and require its Subcontractors to ensure, that all laborers and mechanics performing work relating to the Project are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Federal law are imposed by State, City or other local law, nothing in this Section 17 is intended to relieve Sub-Recipient or its Subcontractors of the obligation, if any, to pay the higher wage rate. Certified payroll records must be submitted on a weekly basis through the LCP Tracker System.

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

laborers and mechanics working at the site of the work.

SDAIHC is required to register this project with the DIR **WITHIN 5 DAYS** of being awarded. Assigned project number shall be provided to the General Contractor and Subcontractors.

Contractor and Subcontractors must comply with all the provisions stated in the agreement between the Owner and the City of San Diego. Contract payments may be withheld when payroll records are delinquent, inadequate, or that underpayment has occurred.

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

APPLICABLE LAWS

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

EQUAL EMPLOYMENT OPPORTUNITY

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

AWARD AND SELECTION OF THE CONTRACTOR

Owner reserves the right to reject any or all Bids and to waive any informality in any Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the bidders.) *Bid items deemed necessary by the Owner are listed on the Cost Bid Form and should not exceed the construction contract budget. Contractors must provide information for all Bid items listed on the Cost Bid Form.*

The selection will consider each bidder's overall suitability to provide the required services within the project's time, budget and operational constraints, and it will consider the comments and/or recommendations of the contractor's previous clients, as well as other references. Award of the contract will be to the lowest and most qualified responsible bidder.

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

- Qualification of the company and experience of the team in similar projects;
- The Total Bid amount shall not exceed \$288,558.00;
- Contractor must demonstrate at least five years of experience in similar projects;
- Quality and detail of schedule. Contractor construction schedule must meet anticipated completion date of

May 5, 2020.

- Please provide copies of SBE/SLBE/MBE/WBE/DBE and or Section 3 Business certifications as applicable;
- Proposed project cost – detailed in the Cost bid Form.
- Complete, thorough and comprehensive Bid Package/with all required documents and information submitted.
- Meet Bid guarantee requirements.

CONDITIONS OF CONSTRUCTION CONTRACT

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

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

1. <https://www2.cslb.ca.gov/OnlineServices/CheckLicense/CheckLicense.aspx>
2. <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

Provide copies of print-outs to the Owner. Contractor shall provide copies of all DRAFT subcontracts to the Owner to ensure that all required CDBG terms and attachments are included.

SCHEDULE

Due to the sensitivity of meeting guidelines related to the funding of this project, Contractor’s bidding on this project must agree that all work shall be completed **within 70 calendar days** after the issuance of the Notice to Proceed by the CDBG Project Manager and before May 5, 2020. Any delays must be reported in writing to **Sean Ayersman, CISSP Chief Information Officer, at 2602 First Avenue San Diego, CA 92103** Schedule must be updated on a weekly basis and provided to the project team.

Within 10 Calendar days after written notification of award of Contract, Contractor shall deliver to Owner the signed Contract, insurance certificate(s) and other documentation required for execution of Contract. Contract will not be binding upon until it has been executed by both parties. Owner will not be liable for any delays prior to the award or execution of Contract.

INSURANCE

Minimum insurance requirements are as follows:

- A. Commercial General Liability written on an ISO Occurrence Form CO 00-01-07-98 or equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million dollars per occurrence, and subject to an annual aggregate of \$2 million dollars. There shall be coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside of the limits of the policy.
- B. Commercial Automobile Liability. For all of the Contractor's vehicles including owned, hired and non-owned vehicles, the Contractor shall keep in full force and effect, automobile insurance written on an ISO

form CA 00-01-12-90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for combined single limit of \$1 million dollars per occurrence. Insurance certificate shall reflect coverage for any vehicle.

- C. Excess/Umbrella Liability to be \$3 million dollars per occurrence/aggregate.
- D. Architects and Engineers Professional Liability. Contractor, and/or Subcontractor, shall ensure the Design Professional they hire or if the Contractor, an/or Subcontractor, will be doing any of the design work for this Project themselves they shall obtain and keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$2,000,000 per claim and \$2,000,000 annual aggregate. The Contractor, and/or Subcontractor, shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Contractor, and/or Subcontractor, agrees that for the period defined above, there will be no changes or endorsements to the policy that increase Urban Corps exposure to loss. All defense costs shall be outside the limits of the policy.
- E. Workers' Compensation. For all of the Contractor's employees who are subject to this agreement and to the extent required by the applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy. The policy shall provide a minimum of \$1 million dollars of employers' liability coverage.
- F. Deductibles. All deductibles on any policy shall be the responsibility of the Contractor and shall be disclosed to **Owner** at the time the evidence of the insurance is provided.

ADDITIONAL INSURED

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

City of San Diego – Each Contractor must endorse the policy or policies in accordance with the City of San Diego Insurance Requirements.

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

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

NONDISCRIMINATION

Owner, encourages the submission of Bids from Women's and Minority, Disabled Veteran, Disabled, Small Business Enterprise, Women Owned Businesses and SLBE, ELBE.

Owner is an Equal Opportunity Employer. Recipients of contracts with Owner must be aware that the Owner is a

pass thru agency for federal, state, county and local dollars and that Owner does not discriminate. Recipients of contracts are subject to prohibitions against discrimination. Recipients of awards agree that they will not discriminate against men or women regardless of race, creed, ancestry physical ability, medical condition, pregnancy, age political affiliation, marital status or sexual orientation. Recipients must comply with Owner's drug free workplace policy.

Recipients are subject to and must comply with all federal, state, county and local laws, including but not limited to nondiscrimination laws, Immigration and Naturalization law, Gender Harassment Warranty and Liability, Americans with Disabilities Act, Social Security Act and Drug Free Workplace.

Owner reserves the right to reject any and all Bids or waive any irregularities in a Bid or in the Bid process.

The Contractor agrees that in addition to the organization, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

Equal Employment Opportunity-The Contractor will comply with E.O. 11246, "Equal Employment Opportunity", as amended.

Copeland "Anti-Kickback" Act-The Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair to give up any part of the compensation to which he is otherwise entitled.

Contract Work Hours and Safety Standards Act-The Contractor will comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor Regulations. This provision requires wage computations on a 40 hour work week with all hours in excess of 40 paid at 1 ½ times the basic rate of pay.

Clean Air Act and the Federal Water Pollution Control Act, as amended. Contractor agrees to comply with all applicable standards, orders or regulations issued.

Byrd Anti-Lobbying Amendment- Contractors must file required certification. Debarment and Suspension (E.O.s 12549 and 12689) No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, Debarment and Suspension and 49 CFR part 29.

ADDITIONAL RULES/STIPULATION OF TERMS

Expenses for developing the Bids and answering Owner questions are entirely the responsibility of the Contractor, and shall not be chargeable in any manner to Owner or the City of San Diego.

1. This document is provided as a courtesy. Owner assumes no responsibility for failure to send it to all interested entities or companies. Owner will not be responsible for any oral instructions, nor should a Bid be based upon verbal information from any employee of Owner.

2. A mandatory Job Walk will be on will be held on Friday January 17, 2020 at 10:00 am PST at 2602 First Avenue, San Diego, CA 92103

3. Addenda issued during the time of the bidding process shall be included in the Bid and shall be made a part of the Contract. Contractor shall list each addendum received.

ADDITIONAL BID SUBMITTAL REQUIREMENTS

Contractors must complete the Cost Bid Form with itemized construction costs and submit a proposed construction schedule and work plan. Bid is to include a Cover Letter detailing all compliance, conformance and inclusion of information and requirements listed in this full IFB. Additionally, all required forms and documents must be included with this IFB response. Failure of Bidder to sufficiently provide proof of and meeting any or all of the qualifications listed below and throughout this IFB, in the opinion of the Owner, will result in the Bidder's bid being deemed non-responsive.

REPORTING AND RESOLVING DISCREPANCIES

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

The Contract Documents may be amended to provide for additions, deletions and revisions in the work or to modify the terms and conditions thereof in one or more of the following ways:

- a) Change order.
- b) Time Extension Request.

In addition, the requirements of the Contract documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- a) Review of a Shop Drawing or sample.
- b) Written interpretation or clarification.

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

BID REQUIRED ATTACHMENTS: The following items are required to be included with Bid

- Screen shot of active Department of Industrial Relations (DIR);
- Screen shot of active SAM.gov Registration **(must have at award if selected)**;
- Non-Collusion Statement;
- References;
- Certificates if applicable;
- Copy of active CLSB License;
- Bid Bond – HUD requirement is minimum 5%;
- Completed Cost Bid Form;
- Assumptions and Exclusions identified in writing: all Assumptions and Exclusions not identified will not be considered after award of Bid.

BID AND CONTRACT DOCUMENT ATTACHMENTS - The following documents provided are hereby made part of this RFP:

- Cost Bid Form;
- FY 2019 CDBG Agreement Between the Owner and the City of San Diego;
- Supplementary Conditions – Construction Contract HUD form 92554;
- Section 3 of the Housing and Urban Development (HUD) Act (12 U.S.C. 1701u and 24 FR Part 135
- Federal Labor Standards Provisions HUD 4010 Form (City PM will provide);
- Labor Code Sections 1720-1743,1770-1784, 1810-1815,1860-1861,3070-3098, and 4100-4114
- Federal Davis Bacon Wage Rate decision number: CA20200001 01/03/2020 MOD 0
- State Prevailing Wage Determination Decision Number: SDI -2019-2



COST BID FORM

San Diego American Indian Health Center

Bid Date: Monday February 10, 2020

Title: ADA Site/ Door hardware/ Elevator Upgrades and HVAC Replacement Project

Addendum:

In submitting this Bid, Respondents represent that: Respondent has examined and carefully studied the RFP and attachments, and any data and reference items identified in the RFP documents, and hereby acknowledges receipt of the following Addenda:

Addendum No:

Addendum Date:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Respondent will complete work for the following price(s):

Not to exceed _____ Thousand _____ Dollars and _____ cents
(Numerical) _____

Bidder acknowledges that (1) each Bid Breakdown Price provided below includes an amount considered by Respondent to be adequate to cover Contractor's costs for General Conditions; overhead (manpower, labor, equipment, etc.), materials, profit, permit fees, bonds, taxes, insurance, cleaning, site conditions SWPP/ BMP if required, design support if required and expenses for each separately identified item.

Respondent's Acknowledgement signature:

Name and Title

BID BREAKDOWN PRICE:

ADA Upgrades:

Item 1. ADA site improvement upgrades: \$ _____

Item 2. Provide ADA compliant Door Hardware: \$ _____

Elevator upgrades:

Item 3. Upgrade existing OTIS elevator: \$ _____

HVAC mechanical equipment replacement:

Item 4. Replace 13 HVAC roof and deck mounted equipment:

HVAC Unit 1 \$ _____

HVAC Unit 2 \$ _____

HVAC Unit 3 \$ _____

HVAC Unit 4 \$ _____

HVAC Unit 5 \$ _____

HVAC Unit 6 \$ _____

HVAC Unit 7 \$ _____

HVAC Unit 8 \$ _____

HVAC Unit 9 \$ _____

HVAC Unit 10 \$ _____

HVAC Unit 11 \$ _____

HVAC Unit 12 \$ _____

HVAC Unit 13 \$ _____

Sub-Total \$ _____

TOTAL \$ _____



SAMPLE TO PROVIDE REFERENCES
San Diego American Indian Health Center

Reference one:

Owner:

Company Name:

Address:

Phone:

E-mail:

Project name:

Type of Project:

Project Location:

Project Description:

Reference two:

Owner:

Company Name:

Address:

Phone:

E-mail:

Project name:

Type of Project:

Project Location:

Project Description:

SDAIHC may contact the references for performance appraisal.

NCIP-FY19-005-01

FISCAL YEAR 2019 CITY OF SAN DIEGO COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM SUBRECIPIENT AGREEMENT

[COVER SHEET]

Subrecipient Name: San Diego American Indian Health Center

Term: This Agreement shall commence on 7/1/2018, (Effective Date), subject to approval by City Attorney in accordance with San Diego Charter Section 40, and shall continue until the earlier of [Term]: (a) completion of the Activity or; (b) 6/30/2020

CFDA Number: CDBG -14.218

Subrecipient Mailing Address: 2602 First Avenue,
Suite 105,
San Diego
California, 92103

Activity Title: SDAIHC,Health Center Capital Improvement

Activity Category: FY19 - Nonprofit Capital Improvement / Housing Rehabilitation

CDBG Activity Budget: \$288,558.00

Leveraged Activity Budget: \$303,611.00

City Council Approval Date: April 23, 2018

Resolution Number: R-311700

IO Number: FY1000003-19

WBS Number:

IDIS Number: 7200

CDBG Grant Award Number: B-18-MC-06-0542

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

Consolidated Plan Strategy: Goal 2: Objective 4

HUD Matrix Code: 03P Health Facilities

CDBG Citation: 570.201(e)

National Objective: LMC

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

Annual Units: 1

Below is a list of Project Locations:

Description	Address Line 1	Address Line 2	City	Zip Code	State	Council District for Admin Office	Census Tract	Block Group	Low Moderate Income
Health Center Capital Improvement	2602 First Avenue		San Diego	92103	California	District 3	60.00	3	35.17

This Agreement is entered into by the City of San Diego, acting by and through its Mayor or designee, pursuant to City Council Resolution R-311700, effective 7/1/2018, authorizing entry into this Agreement, and by Subrecipient, by and through the signature of Subrecipient's authorized representative(s), as follow:

Subrecipient Electronic Signature	Dona James	10/11/2018 3:22 PM
Economic Development Department Electronic Signature	Lydia Moreno	10/12/2018 2:00 PM
Office of the City Attorney Electronic Signature	Marguerite Middaugh	10/26/2018 12:07 PM

This Agreement is comprised of the following documents:

1. General Terms and Conditions
2. EXHIBIT A: Budget
3. EXHIBIT B: Scope of Work
4. EXHIBIT C: Insurance Requirements
5. EXHIBIT D: City Contract Provisions
6. EXHIBIT E: Federal Contract Provisions
7. EXHIBIT F: Construction Requirements
8. EXHIBIT G: Declaration Form

GENERAL TERMS AND CONDITIONS

In consideration of the covenants, conditions, and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, City and Subrecipient enter into this Fiscal Year 2019 Community Development Block Grant Program Subrecipient Agreement (“Agreement”), as of the Effective Date.

1. PURPOSES AND INTENT. City has entered into or will enter into a grant agreement with the United States Department of Housing and Urban Development (“HUD”) to receive Fiscal Year 2019 Community Development Block Grant (“CDBG”) entitlement funds. City requested proposals for funding of eligible activities through City’s Fiscal Year 2019 CDBG program. Subrecipient submitted a proposal to City that was selected for funding from City’s Fiscal Year 2019 CDBG program through City’s competitive proposal evaluation process. Subrecipient’s proposal was approved for funding from City’s Fiscal Year 2019 CDBG program by the City Council through its Resolution R-R-311700, effective 7/1/2018. City desires to provide funding to Subrecipient through City’s Fiscal Year 2019 CDBG program for performance of the Activity (defined in Section 2).

2. DEFINITIONS. In addition to the terms defined on the Cover Page to this Agreement, the following words, terms, and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation

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

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

2.3. Agreement. This Fiscal Year 2019 Community Development Block Grant Program Subrecipient Agreement by and between City and Subrecipient, including all of the attached exhibits.

2.4. Application. Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for construction, installation, use or operation of the Improvements or the Business Accelerator, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument as Subrecipient may reasonably request for the Improvements or the Business Accelerator; or (b) to enable Subrecipient to seek any Approval or to use or operate the Improvements or the Business Accelerator in accordance with this Agreement.

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

2.6. Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 of the United States Code or any other or successor State or Federal

statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.7. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

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

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

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

2.11. CDBG Funds. Entitlement grant funds provided to City by HUD pursuant to the CDBG program or Program Income received by either City or Subrecipient.

2.12. City. The City of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of San Diego, a California municipal corporation.

2.13. City Grant. The CDBG Funds provided by the City to Subrecipient pursuant to this Agreement for performance of the Activity by Subrecipient.

2.14. City Parties. Collectively, City, the City Council and all City elected or appointed officials, employees, agents and attorneys.

2.15. City Representative. Defined in Section 23.1.

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

2.17. Comptroller General. Defined in Section 9.1.

2.18. Construction Requirements. The requirements set forth in EXHIBIT F attached to this Agreement.

2.19. Contract Activity Report. Defined in Section 22.2.

2.20. Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise. “Controlling” and “controlled” shall have correlating meanings.

- 2.21. County. The County of San Diego, California.
- 2.22. Cover Page. The cover page to this Agreement.
- 2.23. Default. A Monetary Default or a Non-Monetary Default.
- 2.24. Effective Date. Defined on the Cover Page to this Agreement.
- 2.25. Environmental Claim. Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.
- 2.26. Environmental Documents. Any and all documents (if any) required to comply with the National Environmental Policy Act (42 U.S.C. sections 4321 - 4347) or the California Environmental Quality Act (Cal. Pub. Res. Code sections 21000 – 21178) for performance of the Activity.
- 2.27. Environmental Law. All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the subject real property, as now or may at any later time be in effect.
- 2.28. Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that owns or holds any ownership or equity interest in a Person.
- 2.29. Event of Default. The occurrence of any one or more of the following:
- 2.29.1. Monetary Default. A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount, or the bond, surety or insurance not provided;
- 2.29.2. Bankruptcy or Insolvency. Subrecipient admits in writing that it is unable to pay its debts as they become due or Subrecipient becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Subrecipient's assets or interest in this Agreement or the Improvements (unless such appointment, attachment, execution, or other

seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

2.29.3. Transfer. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or

2.29.4. Non-Monetary Default. Any Non-Monetary Default, other than those specifically addressed in Section 2.29.2 or Section 2.29.3 that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

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

2.31. Fiscal Year 2019. City's fiscal year starting July 1, 2018, and ending June 30, 2019.

2.32. GAAP. Generally Accepted Accounting Principles.

2.33. GAGAS. Generally Accepted Government Audit Standards.

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

2.35. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance in compliance with Law.

2.36. Hazardous Substance Discharge. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from real property, or during transportation of any Hazardous Substance to or from real property, or that arises at any time from the construction, installation, use or operation of Improvements or any activities conducted at, on, under or from real

property, whether or not caused by a Party.

2.37. HUD. United States Department of Housing and Urban Development.

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

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

2.40. Indemnitee. Any Person entitled to be indemnified under the terms of this Agreement.

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

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

2.43. Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the subject property, or the Improvements, in any way, including relating to any construction, use, maintenance, taxation, operation, occupancy of, or environmental conditions affecting the subject property, or the Improvements, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

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

2.45. Mandatory Assistance. Defined in Section 21.

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

2.47. Monetary Default. Any failure by a Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety, evidence of any insurance coverage required to be provided under this Agreement, or any Records, whether to or with a Party or a Third Person.

2.48. Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

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

2.50. Notify. To give a Notice.

2.51. Operating Manual. City's most current "Operating Manual" containing procedures for fiscal management and accountability for Activities receiving CDBG Funds.

2.52. Parties. Collectively, City and Subrecipient.

2.53. Party. Individually, either City or Subrecipient, as applicable.

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

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

2.56. Prevailing Wage Action. Any of the following: (a) any determination by the State Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or the Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code section 1781 or applicable Federal Law.

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

2.58. Records. All administrative or financial records relating to the Activity prepared or gathered by Subrecipient, including all books, papers, invoices, receipts, accounting records in accordance with GAAP and 2 C.F.R. § 200, payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigative videos, work product, and any other documents, data or records pertaining to any or all matters covered by this

Agreement, or required by applicable provisions of 24 C.F.R. § 570.506 or the Operating Manual.

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

2.60. Retention Period. Defined in Section 9.3.

2.61. Scope of Work. The performances described in EXHIBIT B.

2.62. SDMC. San Diego Municipal Code.

2.63. State. The State of California.

2.64. Subcontract. A contract between Subrecipient and a Subcontractor.

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

2.66. Subrecipient Parties. Collectively, Subrecipient and its directors, officers, employees, agents, guests, invitees, shareholders, members, managers, partners and Affiliates.

2.67. Subrecipient Representative. Defined in Section 23.2.

2.68. Term. Defined on the Cover Page to this Agreement.

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

2.70. Transfer. Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right or obligation or of any legal, beneficial or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any Equity Interest(s) in Declarant of such property, right or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.70, shall be deemed a Transfer by Subrecipient, even though Subrecipient is not technically the transferor.

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

2.72. Work. Any performance described in the Scope of Work.

3. **NATIONAL OBJECTIVE CERTIFICATION**. Subrecipient certifies that the Activity meets one or more of the national objectives for use of CDBG Funds pursuant to 24 C.F.R. § 570.208, as specifically referenced on the Cover Page.

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

5. REIMBURSEMENT OF EXPENDITURES.

5.1. City Grant Budget Amount. The total of all payments to be reimbursed to or on behalf of Subrecipient under this Agreement shall not, under any circumstances, exceed the total Budget. Subrecipient acknowledges and agrees that any and all expenditures by Subrecipient exceeding the total Budget or not permissible under the Operating Manual, or Laws governing this Agreement, shall be borne solely by Subrecipient. City is under no obligation to contribute any financial assistance to performance of the Activity other than the City Grant, regardless of the actual cost of performing the Activity.

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

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

5.4. Supporting Information. Subrecipient shall provide City with authentic, accurate, and legible written documentation for all expenditures relating to the Activity and for

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

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

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

5.7. Timely Expenditure. Subrecipient acknowledges that City must comply with HUD's requirement that CDBG Funds allocated for the Activity be expended in a timely manner and that City must monitor and administer all contracts involving City CDBG Funds. Subrecipient agrees to expend all CDBG Funds allocated to the Budget and complete the Activity before expiration of the Term. Any CDBG Funds

not expended by Subrecipient before expiration of the Term may be reprogrammed by City Council without Notice to Subrecipient and will not be available to reimburse Subrecipient for any Activity expense incurred by Subrecipient.

5.8. Return of Improper Reimbursement. Upon the determination of City or HUD that any reimbursement provided to Subrecipient under this Agreement was for an ineligible expenditure or based on a fraudulent or other illegal or improper submittal of a request for reimbursement by Subrecipient, Subrecipient shall return such funds to City within fourteen (14) calendar days after Notice to Subrecipient. Upon the determination of City or HUD that any reimbursement provided to Subrecipient was based on an inadequate or improper submittal of a request for reimbursement by Subrecipient, Subrecipient shall provide any and all documentation required by City or HUD to fully remedy such concern(s), within fourteen (14) calendar days after Notice to Subrecipient. If Subrecipient is unable or unwilling to provide documentation to fully remedy such concern(s), Subrecipient shall return the reimbursed funds to City within such fourteen (14) calendar day time period. In addition to the remedies set forth in Section 17, if Subrecipient fails to timely return any funds to City in accordance with this Section 5.8, City reserves the right to deduct such amounts from any future reimbursement becoming due to Subrecipient under this Agreement.

6. PROGRAM INCOME. Subrecipient may use Program Income for performance of the Activity, provided that Subrecipient submits to City a written budget detailing Subrecipient's proposed use of Program Income and obtains City's prior written approval of such written budget, in City's sole and absolute discretion. Subrecipient shall separately account for any and all Program Income accrued or used by Subrecipient in its reports, audits or financial statements submitted to City under Section 8. If City approves Subrecipient's written budget for use of Program Income, all provisions of this Agreement shall apply to the use of such Program Income. Subrecipient agrees that substantially all Program Income approved by City for use by Subrecipient shall be used by Subrecipient for eligible activities before Subrecipient requests disbursement of additional CDBG Funds from City. If City does not approve Subrecipient's written budget for use of Program Income, Subrecipient shall return to City any and all Program Income balances (including investments thereof) held by Subrecipient within thirty (30) calendar days after the later of: (a) City's Notice of disapproval of Subrecipient's proposed budget; (b) expiration of the Term; (c) termination of this Agreement; or (d) Subrecipient's receipt of the Program Income.

7. INSURANCE. Prior to the Effective Date and prior to Subrecipient's performance of any Work, Subrecipient shall obtain and maintain, to protect the City Parties against all insurable Claims relating to this Agreement or the Activity, at the sole cost and expense of Subrecipient, all insurance coverage required in EXHIBIT C attached to this Agreement and deliver written certificates or policies of insurance evidencing all required insurance coverage to City. Subrecipient shall require and ensure that any and all Subcontractors obtain and maintain all of the insurance coverage required in EXHIBIT C. Neither Subrecipient nor any Subcontractor shall commence any Work, unless and until written evidence of all insurance required to be carried by Subrecipient and such Subcontractor under this Section 7 has been submitted to and approved by City.

8. REPORTS, FINANCIAL STATEMENTS, AND AUDITS.

8.1 Periodic Reports. Subrecipient shall submit to City a fiscal and programmatic report on a Reporting Period basis summarizing Subrecipient's expenditures in pursuing the Activity and the elements of the Activity completed during the applicable Reporting Period, along with any and all invoices and other documentation required by City. Such a report shall be submitted within fifteen (15) calendar days after the end of each Reporting Period. Upon City's request, Subrecipient shall participate in one or more annual reporting workshops regarding use of CDBG Funds.

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

8.3 Subrecipient Financial Statements. For each fiscal year that Subrecipient receives CDBG Funds pursuant to this Agreement, Subrecipient shall have audited financial statements prepared by an independent certified public accountant, in accordance with GAAP and GAGAS. Subrecipient shall provide City a copy of Subrecipient's audited financial statements within six (6) months after the end of Subrecipient's fiscal year. Audited financial statements shall include all of the following: (a) a balance sheet, income statement, and cash flow statement showing use of revenues and expenditures for all CDBG Funds received by Subrecipient pursuant to this Agreement; (b) a statement certifying compliance with all terms and conditions of this Agreement signed by the Subrecipient Representative; and (c) a statement certifying that all reports and disclosures required from Subrecipient under this Agreement have been completed, signed, and submitted by the Subrecipient Representative.

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

8.5 City and Federal Government Access to Audit Information. Subrecipient shall provide in any agreement Subrecipient enters into with an audit firm that: (a) the audit firm shall provide access for City or the Federal government to the working papers of the auditor(s) who prepare(s) the audit(s) for Subrecipient; and (b) Subrecipient waives any claim of privilege or confidentiality regarding, and consents

to and authorizes the audit firm to release to City or the Federal government, any and all information obtained and utilized by such audit firm as the basis of any audit report issued by the audit firm and relating to Subrecipient.

8.6 Other Audits. If Subrecipient is subject to an audit from a source other than City, Subrecipient shall provide a copy of the audit to City within thirty (30) calendar days after Subrecipient's receipt of the audit. City, in its sole and absolute discretion, may conduct a review of any such Third Person audit(s). Subrecipient shall fully cooperate with any such review by City, including providing any and all documentation associated with any such Third Person audit(s) within fourteen (14) calendar days after Notice from City.

8.7 Adverse Audit Findings. If any type of audit or monitoring review reveals any pattern of suspicious or questionable requests for reimbursement by Subrecipient under this Agreement, City shall have the right, in its sole and absolute discretion, to take remedial action under Section 17 or 18. If an independent audit identifies any concerns about Subrecipient's accounting practices or internal controls that results in an independent auditor's opinion other than an unqualified opinion, City shall have the right to suspend or terminate this Agreement, effective immediately upon Notice to Subrecipient. On any such termination, City shall have the right to reprogram any and all unexpended CDBG Funds allocated to the Budget under this Agreement.

8.8 Subrecipient Cooperation. Subrecipient shall fully cooperate with City and any other auditors in any review or investigation of Subrecipient's conduct or action(s) relating to this Agreement. Failure by Subrecipient to so cooperate shall be a Monetary Default by Subrecipient under this Agreement.

9. RECORDS.

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

9.2. Ownership of Original Records. Once Subrecipient receives any reimbursement

from City under this Agreement, all Records shall be the property of City. City's ownership of the Records includes the use, reproduction, or reuse of the Records, and all incidental rights, whether or not the work for which the Records were prepared is performed. No Records shall be shown to any other Person, except as authorized by City in writing, or where such Records are subject disclosure pursuant to the California Public Records Act, as determined by the City Attorney.

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

10. PROCUREMENT OF GOODS AND SERVICES. All procurement of goods and services by Subrecipient and its Subcontractors in performance of the Activity obligating or resulting in expenditure of any CDBG Funds shall be consistent with CDBG program procurement requirements and comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to City's procurement of such goods and services with CDBG Funds, as modified by Section 10.2. A violation of this Section 10 shall be an Event of Default by Subrecipient under this Agreement.

10.1. Agreement Duration. Agreements for procured goods or services may not exceed five (5) years, nor may they be renewed, unless renewal was included in the original solicitation and does not result in the total term of the agreement exceeding five (5) years. A simple extension of the term of an agreement that does not result in an obligation of Subrecipient to pay additional CDBG Funds to the contractor is not considered a renewal of an agreement. However, no renewal or extension of an agreement may result the term of the agreement exceeding five (5) years.

10.2. Bid Requirements. Subrecipient or its Subcontractors shall obtain the following price bids before awarding a contract that will be funded in whole or in part with CDBG Funds: (a) when a contract provides for an expenditure equal to or less than \$10,000 in total, Subrecipient may award the contract based on, at least, two (2) written price bids from different sources; (b) when a contract provides for an expenditure greater than \$10,000, but equal to or less than \$50,000 in total, Subrecipient may award the contract after soliciting written price bids from, at least, five (5) potential sources and receiving, at least, three (3) written price bids from different sources; or (c) when a contract provides for an expenditure greater than \$50,000, but equal to or less than \$1,000,000 in total, Subrecipient may award the

contract only after advertising for sealed bids or proposals for a minimum of five (5) days in the San Diego Daily Transcript Newspaper at least thirty (30) days before the sealed bids or proposals are due.

11. **IMPROVEMENTS.** If the Activity includes any Improvements, the Construction Requirements shall apply to this Agreement and performance of the Activity.

12. **CITY GRANT CLOSE OUT.** City will close out the City Grant provided under this Agreement to Subrecipient for the Activity when: (1) all Activity expenses to be paid with the City Grant are reimbursed to the Subrecipient, exclusive of audit expenses; (2) the Activity for which the City Grant was provided is completed and satisfies a national objective under 24 C.F.R. § 570.208; (3) all audits and reports to be provided by Subrecipient under this Agreement are complete and delivered to City; and (4) all other responsibilities of Subrecipient under this Agreement and Law are performed or there is no further City interest in keeping this Agreement open for the purpose of securing such performance. When all of the conditions to City Grant close out set forth in the immediately preceding sentence are satisfied, City will Notify Subrecipient that the City Grant has been closed out. City close out of the City Grant may occur after expiration of the Term, but Subrecipient must submit all material required for City Grant close out to City before the expiration of the Term.

13. **COMPLIANCE WITH LAW.** Subrecipient and its Subcontractors shall comply with all Law and all directives issued by City, or its authorized representatives, under authority of any Law.

14. **CITY CONTRACT PROVISIONS.** Subrecipient shall comply with City's contract provisions set forth in EXHIBIT D attached to this Agreement.

15. **FEDERAL CONTRACT PROVISIONS.** Subrecipient shall comply with the Federal contract provisions set forth in EXHIBIT E attached to this Agreement.

16. **INDEMNIFICATION.**

16.1. Subrecipient Indemnity Obligations. Subrecipient shall Indemnify the City Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the Subrecipient Parties; (b) any Application made by or at Subrecipient's request; (c) any agreement that Subrecipient (or anyone claiming by or through Subrecipient) makes with a Third Person regarding this Agreement, the City Grant, or the Activity; (d) any worker's compensation claim or determination relating to any employee of the Subrecipient Parties or their Subcontractors; (e) any Environmental Claim attributable to any action or failure to act by the Subrecipient Parties; or (f) any Prevailing Wage Action.

16.2. Independent of Insurance Obligations. Subrecipient's Indemnity obligations under this Agreement shall not be construed or interpreted as restricting, limiting, or modifying Subrecipient's insurance or other obligations under this Agreement. Subrecipient's obligation to Indemnify the City Parties under this Agreement is independent of Subrecipient's insurance and other obligations under this Agreement. Subrecipient's compliance with Subrecipient's insurance obligations and other obligations under this Agreement shall not restrict, limit or modify Subrecipient's

obligations to Indemnify the City Parties under this Agreement and are independent of Subrecipient's obligations to Indemnify the City Parties and Subrecipient's other obligations under this Agreement.

16.3. Survival of Indemnification and Defense Obligations. The obligations of Subrecipient under this Agreement to Indemnify the City Parties shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to any such obligation under this Agreement to Indemnify the City Parties are fully, finally, absolutely and completely barred by applicable statutes of limitations.

17. EVENT OF DEFAULT REMEDIES. Notwithstanding any provision of this Agreement to the contrary, if an Event of Default by Subrecipient occurs, City may exercise any or all of the following remedies: (a) suspending one or more payments under this Agreement to Subrecipient, until Subrecipient and each Subcontractor is in compliance with this Agreement; (b) not reimbursing Subrecipient for all or part of the expenses of the Activity; (c) immediately terminating this Agreement in accordance with either Section 18.3 or Section 18.4; (d) those remedies set forth in 24 C.F.R. § 570.910, pursuant to 24 C.F.R. § 570.501(b); (e) deeming Subrecipient ineligible from consideration for any future CDBG funding from City; (f) any other remedy specified in this Agreement; or (g) any remedy available at law or in equity. The rights and remedies of City under this Agreement are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or prevent City's exercise of any other rights or remedies under this Agreement, at law or in equity, existing as of the Effective Date or later enacted or established, that may be available to City against Subrecipient.

18. TERMINATION

18.1. End of Term. Upon the expiration of the Term, this Agreement shall automatically terminate, without any required action by or Notice to either Party.

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

18.3. Event of Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Subrecipient, following the occurrence of an Event of Default by Subrecipient, subject to the provisions of Section 18.4.

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

18.4.1. Subrecipient made or makes a material misrepresentation to City relating to this Agreement or any money received by Subrecipient pursuant to this Agreement, regardless of whether Subrecipient had knowledge or intent with respect to the misrepresentation;

18.4.2. Subrecipient violates any term or condition of this Agreement for which

immediate termination is expressly authorized in this Agreement;

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

18.4.4. Subrecipient misappropriates any funds received by Subrecipient pursuant to this Agreement;

18.4.5. Subrecipient files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;

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

18.4.7. Subrecipient is unable or unwilling to comply with any additional term or condition governing the Activity or this Agreement that may be required by newly enacted (or amended) Law.

18.5. Effect of Termination. Termination of this Agreement shall terminate the rights and obligations of the Parties under this Agreement, except the Parties' rights or obligations arising under this Agreement upon such termination or expressly stated in this Agreement as surviving termination of this Agreement.

19. SUBRECIPIENT RESPONSIBILITIES ON EXPIRATION OR TERMINATION OF THIS AGREEMENT. If this Agreement expires or is terminated, Subrecipient shall comply with Sections 6 and 8 of this Agreement and Section 12 of EXHIBIT E attached to this Agreement.

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

21. MANDATORY ASSISTANCE. If any dispute or litigation, or both, involving a Third Person, where the dispute or litigation arises out of, or relates to, this Agreement, City is named as a party to such dispute or litigation, and Subrecipient's Indemnity obligations under Section 16 do not apply to such dispute or litigation, then upon City's Notice to Subrecipient requesting such assistance, the Subrecipient Parties shall fully assist City in resolving the dispute or litigation. Assistance to City pursuant to this Section 21 is referred to in this Agreement as "Mandatory Assistance" and includes providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute or litigation. In providing City with Mandatory Assistance, if the Subrecipient

Parties incur reasonable costs (excluding Legal Costs), City will reimburse the Subrecipient Parties for such costs. However, if it is determined through resolution of the Third Person dispute or litigation, or both, that such Third Person dispute or litigation was attributable, in whole or in part, to one or more acts or omissions of one or more of the Subrecipient Parties, Subrecipient shall fully reimburse City for all amounts paid to the Subrecipient Parties in reimbursement of costs incurred in providing Mandatory Assistance and shall Indemnify City pursuant to Section 16 for all liability related to or arising from the Third Person dispute or litigation, or both.

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

22.1. Required Subcontract Language. Subrecipient shall ensure that all subcontracts entered into in connection with the Activity contain the provisions in EXHIBIT D attached to this Agreement and the provisions in EXHIBIT E attached to this Agreement.

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

22.3. Prohibition on Use of Certain Subcontractors. Subrecipient shall not employ, award any contract to, engage the services of, or fund any Subcontractor, during any period when Subrecipient has notice (actual, constructive, or implied) of such

Subcontractor's Federal, State, City or other debarment, suspension, or ineligibility. Subrecipient shall electronically certify to City that Subrecipient is in compliance with this Section 22.3. A contract award must not be made to any person or entity listed on the Federal government wide Excluded Parties List System in the Federal System Award Management, in accordance with 2 C.F.R. Part 180.

23. REPRESENTATIVES.

23.1 City Representative. City's Economic Development Department is City's administrator for this Agreement. The Community Development Division Program Manager in City's Economic Development Department is City's representative for all purposes of this Agreement ("City Representative"). The City Representative shall communicate with Subrecipient on all matters related to the administration of this Agreement and Subrecipient's performance of its obligations under this Agreement. When this Agreement refers to communications to or with City, those communications shall be with the City Representative, unless this Agreement or the City Representative specifies otherwise. When this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his or her designee, unless this Agreement specifies otherwise. City, in its sole and absolute discretion, may change the identity of the City Representative at any time by Notice to Subrecipient at least ten (10) days in advance of the effective date of such change.

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

24. **NO PARTNERSHIP OR JOINT VENTURE**. The Parties each intend and agree that City and Subrecipient are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between or among them. Subrecipient acknowledges and agrees that Subrecipient is an independent contractor and not an agent or employee of City. Any provision of this Agreement that may appear to give City a right to direct Subrecipient concerning the details of performing its obligations under this Agreement, or to exercise any control over such performance, shall mean only that Subrecipient shall follow the direction of City concerning the end results of the performance. Subrecipient shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind, on behalf of or against City, whether by contract or otherwise.

25. **NO ASSIGNMENT OR DELEGATION**. Because this Agreement is entered into by City in reliance upon Subrecipient's qualifications, experience, and personnel, Subrecipient shall not assign any of its rights or delegate or subcontract any of its obligations or duties under this Agreement, without the prior written consent of City, which may be given, withheld or conditioned in City's sole and absolute discretion. Any asserted assignment of Subrecipient's rights or delegation or subcontract of Subrecipient's obligations or duties under this Agreement shall not create a contractual relationship between City and any asserted assignee, delegatee or Subcontractor, and any such

assignment, delegation or Subcontract shall be ineffective, null and void.

26. CONFIDENTIALITY OF INFORMATION. All information provided by City to Subrecipient in connection with this Agreement is for the sole use of Subrecipient in performing Subrecipient's obligations under this Agreement. Subrecipient shall not release any of this information to any Third Person, without the prior written consent of City, except information that: (a) was publicly known, or otherwise known to Subrecipient, at the time the information was provided to Subrecipient by City; (b) subsequently becomes publicly known, through no act or omission of Subrecipient; (c) becomes known to Subrecipient from a source or means other than City; or (d) is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6276.48), as determined by the City Attorney.

27. INTELLECTUAL PROPERTY. City, on behalf of itself and the Federal Government, reserves a royalty-free, non-exclusive, and irrevocable, license to reproduce, publish, or otherwise use and to authorize others to use for City or Federal Government purposes: (a) all Intellectual Property developed with CDBG Funds provided through the City Grant; or (b) all Intellectual Property that Subrecipient or any of its Subcontractors' acquires, directly or indirectly, using CDBG Funds provided through the City Grant.

28. GENERAL PROVISIONS.

28.1 Notices, Demands, and Communications between the Parties. Any and all Notices submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by first-class registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated on the Cover Page to this Agreement or at the end of this Section 28.1. Notices may be sent in the same manner to such other addresses as a Party may from time to time designate by Notice in accordance with this Section 28.1. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is deposited with the United States Postal Service in accordance with this Section 28.1. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice address for Subrecipient, as of the Effective Date, is set forth on the Cover Page to this Agreement. The Notice address for City, as of the Effective Date, is: City of San Diego, Economic Development Department, ATTN: Community Development Division Program Manager, 1200 Third Avenue, Suite 1400, San Diego, CA 92101; email address: CDBG@sandiego.gov.

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

28.3 Integration. This Agreement, the exhibits attached to this Agreement, and all documents or materials referred to in this Agreement constitute the entire agreement of the Parties about the subject matter of this Agreement. All prior negotiations or

agreements between the Parties about the subject matter of this Agreement are merged into this Agreement.

28.4 No Implied Waiver. No failure of any Party to insist upon the strict performance by another Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy for a Default or Event of Default shall constitute a waiver of any such Default or Event of Default or the requirement to comply with such term, covenant, or condition. No waiver of any Default or Event of Default shall affect or alter this Agreement, and each and every term, covenant, and condition, in this Agreement shall continue in full force and effect regarding any existing or subsequent Default or Event of Default.

28.5 Successors in Interest. Subject to Section 28.20, this Agreement, and all rights, obligations, or duties under this Agreement, shall be in full force and effect, whether or not any Party to this Agreement has been succeeded by another Person, and all rights, obligations, or duties under this Agreement shall be binding on each Party's successor in interest.

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

28.7 Conflicts between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibit attached to this Agreement, the exhibit shall control. If a conflict exists between an applicable Law and this Agreement, then the Law shall control. Varying degrees of stringency among the main body of this Agreement, the attached exhibits, or Law are not deemed conflicts, and the most stringent requirement shall control. Each Party shall Notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

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

28.9 Exhibits Incorporated. All exhibits attached to this Agreement or referenced in this Agreement are incorporated into this Agreement.

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

28.11 Warranty against Payment of Consideration for Agreement. Subrecipient represents and warrants to City that: (a) Subrecipient has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Subrecipient and Third Persons to whom fees are paid for professional services related to planning, design or construction of Improvements or documentation of this Agreement; and (b) no gratuities, in the form of entertainment,

gifts or otherwise have been or will be given by Subrecipient or any of Subrecipient Parties to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 28.11 shall entitle City to terminate this Agreement immediately, without liability, by Notice to Subrecipient. Upon any termination of this Agreement pursuant to this Section 28.11, Subrecipient shall immediately refund any and all payments made to or on behalf of Subrecipient by City pursuant to this Agreement prior to the date of such termination.

28.12 Non-liability of City Officials and Employees. No elected or appointed official or employee of City shall be personally liable to Subrecipient, or any successor in interest to Subrecipient, in the event of any Default or Event of Default by City under this Agreement or for any amount that may become due to Subrecipient or to Subrecipient's successor on any obligations under the terms of this Agreement, except to the extent resulting from the sole negligence or willful misconduct of such elected or appointed official or employee.

28.13 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

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

28.15 Governing Law and Venue. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into and is to be fully performed in the County. All legal actions arising from this Agreement shall be filed in, and the Parties agree to submit to the personal jurisdiction of, the Superior Court of the State in and for the County or the United States District Court with jurisdiction in the County.

28.16 Unavoidable Delay; Extension of Time for Performance. Subject to any specific provisions of this Agreement limiting or restricting the effects of an Unavoidable Delay (if any), performance by a Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

28.17 Tax Consequences. Subrecipient acknowledges and agrees that Subrecipient shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Subrecipient related to this Agreement.

28.18 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

28.19 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of each Party, respectively. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid, unless made in the form of a written amendment to this Agreement signed by the authorized representative(s) of each Party, respectively. The Parties agree to enter into any and all amendments to this Agreement that are or become necessary to comply with any and all new or modified Laws affecting this Agreement.

28.20 Prohibition of Transfers. Subrecipient acknowledges and agrees that the qualifications and identity of Subrecipient is of particular importance and concern to City. Subrecipient further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Subrecipient in entering into this Agreement and City would not have entered into this Agreement, but for the specific qualifications and identity of Subrecipient. As a consequence, Transfers by Subrecipient are only permitted with the prior written consent of City, in City's sole and absolute discretion. Subrecipient will not create or permit to be made or created any Transfer, except in accordance with this Section 28.20, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 28.20 shall be voidable at the election of City, in City's sole and absolute discretion. Subrecipient acknowledges and agrees that the restrictions on Transfers set forth in this Section 28.20 are reasonable. Subrecipient agrees to reimburse City for all costs and expenses incurred by City in connection with City's review of a proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses.

28.21 Mayor Implementation. City shall implement this Agreement through its Mayor. The Mayor is authorized to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement, issue approvals, interpretations or waivers and enter into amendments to this Agreement, all on behalf of City, to the extent that any such action(s) does/do not increase the monetary obligations of City by more than ten percent (10%) of the total Budget. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by separate action of the City Council. Nothing in this Section 28.21 shall restrict the submission to the City Council of any matter within the Mayor's authority under this Section 28.21, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 28.21 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor without consideration by the City Council.

28.22 Survival of Agreement. All provisions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement and shall be applicable to any dispute between the Parties arising from this Agreement, whether arising prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, shall survive the expiration or termination of this Agreement.

28.23 Pages and Exhibits. This Agreement includes the Cover Page, twenty-two (22) pages of General Terms and Conditions, and seven (7) attached exhibits.

[Remainder of page intentionally blank.]

**EXHIBIT A
BUDGET**

Total Project Funds								
#	Budget Category	City Amount						
1	PE: Salary and Wages	\$ 0						
2	PE: Fringe Benefits	\$ 0						
3	Total Personnel Budget	\$0						
4	NPE: Direct Program Delivery Expenses	\$ 0						
5	NPE: Supplies-Administration Use	\$ 0						
6	NPE: Supplies-Client Use	\$ 0						
7	NPE: Publications/Printing	\$ 0						
8	NPE: Rent/Lease	\$ 0						
9	NPE: Maintenance/Repair	\$ 0						
10	NPE: Utilities	\$ 0						
11	NPE: Communications	\$ 0						
12	NPE: Equipment Rental	\$ 0						
13	NPE: Insurance	\$ 0						
14	NPE: Federally Approved Indirect Cost Rate*	\$ 0						
15	NPE: Construction/Renovation	\$ 271,245						
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Title</th> <th style="width: 55%;">Narrative</th> <th style="width: 20%;">Sub Total - City</th> </tr> </thead> <tbody> <tr> <td>Construction Renovation</td> <td>Cost associated with bringing Clinic up to current ADA standards</td> <td style="text-align: right;">\$ 271,245</td> </tr> </tbody> </table>			Title	Narrative	Sub Total - City	Construction Renovation	Cost associated with bringing Clinic up to current ADA standards	\$ 271,245
Title	Narrative	Sub Total - City						
Construction Renovation	Cost associated with bringing Clinic up to current ADA standards	\$ 271,245						
16	NPE: Construction Management (max. 6% of Project Budget)	\$ 17,313						
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Title</th> <th style="width: 55%;">Narrative</th> <th style="width: 20%;">Sub Total - City</th> </tr> </thead> <tbody> <tr> <td>Construction Management</td> <td>Cost associated with overseeing and managing the Capital Improvement Project.</td> <td style="text-align: right;">\$ 17,313</td> </tr> </tbody> </table>			Title	Narrative	Sub Total - City	Construction Management	Cost associated with overseeing and managing the Capital Improvement Project.	\$ 17,313
Title	Narrative	Sub Total - City						
Construction Management	Cost associated with overseeing and managing the Capital Improvement Project.	\$ 17,313						
17	NPE: Loans	\$ 0						
18	NPE: Consultant Services	\$ 0						
19	NPE: Direct Loans to Businesses	\$ 0						
20	Total Non-Personnel Budget	\$288,558						
21	Total Budget	\$288,558						

EXHIBIT B
SCOPE OF WORK

Project Goals and Outcomes

Consolidated Plan Goal

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

Strategic Plan Goal

Goal 2: Objective 4

HUD Matrix Code

03P Health Facilities

CDBG Citation

570.201(e)

National Objective

LMC

Objective Category

Suitable Living Environment

Outcome Category

Availability/Accessibility

Outcome Indicator

Public Facilities

Annual Units

1

Programmatic Report (MPR)

NCIP – PFI & SUS

Project Details

Project Description

This construction project at the San Diego American Indian Health Center involves the roof, HVAC system for patient exam rooms and waiting areas and ADA-related improvements, such as ramps, compliant door switches and openers, and hallway widening, to facilitate access by patients with disabilities.

Target Population

The project targets low/moderate-income (LMI) and uninsured residents within the City of San Diego with a focus on the Native American population. About 60 percent of current patients are LMI, non-Native residents of neighborhoods surrounding the Subrecipient's facility. A 2016 report from the UCLA Center for Health Policy Research estimated that 38.7 percent of American Indian and Alaska Native (AI/AN) residents of San Diego County are reported as uninsured, a percentage that far exceeds the general service area population and the rates countywide, statewide, and nationwide. Some urban Indians are covered by the federal Indian Health Service program as enrolled members of federally recognized Tribes, but many have lost enrollment due to moving away from their home reservations and have not been able to maintain enrollment.

Project Outcome

A total of 883 unduplicated individuals will have improved access to services and resources for the purpose of creating a suitable living environment upon completion of facility improvements.

Project Activities

Addition of ADA-compliant switches and openers at patient entry doors to the facility; upgrades to concrete ramps at patient entry doors to ensure compliance with current ADA standards; replace an interior entry door in Medical Suite B; hallway conversion to allow for patient elevator access to the second-floor business offices; and upgrade to the aging HVAC system for clinic patient exam rooms and waiting areas.

A more detailed description of the specific construction activities to be completed shall be approved by the Community Development Division (CDD) after the FY 2019 CDBG Agreement between the City and Agency is executed and Agency completes the required bidding process. Approved project activities to be paid with CDBG funds shall not be implemented by Subrecipient prior to issuance of the Notice to Proceed by the Community Development Project Manager.

Subrecipient shall ensure that Low/Mod Limited Clientele (LMC) eligibility determinations are completed based on the most current CDBG Income Limits issued by HUD, which will be distributed by the Community Development Division.

Subrecipient is required to obtain documentation regarding the family size and annual income of the family of each person receiving project services. Income includes, gross wages, social security payments, retirement, disability, alimony, child support, and unemployment. Income does not include food stamp assistance or lump sum payments such as insurance settlements. Occasional overtime is excluded, but regular overtime is included. Subrecipient must ensure that fifty-one percent (51%) of the total clients served by this project are members of a low- and moderate-income family. Presumed Benefit documentation may only apply to projects that exclusively serve a group of persons in any one or combination of the following categories: abused children; battered spouses; elderly persons 65 years or older; adults meeting the Census' Current Population Reports definition of "severely disabled"; homeless persons; illiterate adults; persons living with AIDS; and migrant farm workers.

In addition to the required income verification documentation, Subrecipient is required to obtain race and ethnicity documentation for those same clients.

EXHIBIT C

INSURANCE REQUIREMENTS

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

2. Specific Insurance. Subrecipient shall procure and maintain for the duration of this Agreement insurance against Claims for injuries to Persons or damages to property that may arise from or in connection with performance under this Agreement by Subrecipient or any other Subrecipient Parties. Subrecipient shall provide, at a minimum, the following insurance coverage:

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

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

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

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

2.4.1 *Additional Insured Status.* The City Parties are to be covered as additional insured on the required Commercial General Liability insurance policy with respect to liability arising out of work or operations performed by or on behalf of Subrecipient, 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 Subrecipient's Commercial General Liability insurance policy (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or

CG 20 38; and CG 20 37, if a later edition is used).

2.4.2 Primary Coverage. For any Claims related to this Agreement, Subrecipient's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of Subrecipient's insurance and shall not contribute with it.

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

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

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

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

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

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

2.9 Additional Insurance. Subrecipient may obtain additional insurance not required by this Agreement, as long as the City Parties are named additional insured under such insurance policies.

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

2.11 Subcontractors. Subrecipient shall require and verify that all Subcontractors maintain insurance meeting all the insurance requirements of this Agreement. Subrecipient shall also ensure that the City Parties are additional insured under insurance required from Subcontractors. For commercial general liability insurance coverage, Subcontractors shall provide coverage with a form at least as broad as the CG 20 38 04 13 endorsement.

2.12 Deliveries to City. Evidence of Subrecipient's maintenance of all insurance policies required by this Agreement shall be delivered to City within five (5) days after the Effective Date. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Subrecipient shall deliver to City evidence of Subrecipient's maintenance of all insurance required by this Agreement. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties pursuant to this Agreement.

2.13 No Representation. No Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

EXHIBIT D
CITY CONTRACT PROVISIONS

1. **COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP).** Subrecipient shall comply with City's EOCP Requirements. Subrecipient shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subrecipient shall provide equal opportunity in all employment practices. Subrecipient shall ensure that its Subcontractors comply with this program. Nothing in this EXHIBIT D, Section 1, shall be interpreted to hold Subrecipient liable for any discriminatory practice of its Subcontractors.

2. **NON-DISCRIMINATION IN CONTRACTING.** Subrecipient shall comply with City's Nondiscrimination in Contracting Ordinance, codified in SDMC sections 22.3501 – 22.3517. Subrecipient shall not discriminate on the basis of race, color, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Subrecipient shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Subrecipient agrees and understands that violation of this EXHIBIT D, Section 2, shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment or other sanctions.

2.1 Within sixty (60) calendar days after Notice from City requesting such information, Subrecipient shall provide City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Subrecipient has used in the past five years on any of its contracts that were undertaken within the County, including the total dollar amount paid by Subrecipient for each subcontract or supply contract. Subrecipient shall fully cooperate in any investigation conducted by City, pursuant to City's Nondiscrimination in Contracting Ordinance, referenced above in this EXHIBIT D, Section 2.

3. **LOCAL BUSINESS AND EMPLOYMENT.** Subrecipient acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Subrecipient shall, to the extent reasonably possible and allowed by Law, solicit applications for employment and bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Subrecipient shall hire qualified local residents and firms, whenever feasible and allowed by Law.

4. **LIVING WAGES.** This Agreement is subject to City's Living Wage Ordinance ("LWO"), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits, unless an exemption applies. SDMC section 22.4225 requires Subrecipient to fill out and file a living wage certification with the City Manager within thirty (30) days after the Effective Date. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect increases in the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Subrecipient agrees to require all of its Subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

4.1 **Exemption from Living Wage Ordinance.** Pursuant to SDMC section 22.4215, this Agreement may be exempt from the LWO. For a determination on this exemption, Subrecipient must complete the Living Wage Ordinance Application for Exemption.

4.2 **Proof of Compliance.** Subrecipient shall submit written proof of compliance with or exemption from the LWO on or before the first day of each Fiscal Year during the Term. No funds will be provided by City to Subrecipient under this Agreement unless and until written proof of Subrecipient's compliance with or exemption from the LWO is received and approved by the City Representative.

5. **AMERICANS WITH DISABILITIES ACT.** Subrecipient shall comply with City Council Policy 100 04, as adopted by City Council Resolution R-282153, relating to the Federally mandated Americans with Disabilities Act.

6. **DRUG – FREE WORKPLACE.** Subrecipient shall comply with City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R 277952. Subrecipient shall certify that it will provide a drug free workplace, by electronically submitting to City a "Certification for a Drug-Free Workplace" form approved by an authorized representative of Subrecipient. Submittal of this certification by Subrecipient shall be a condition precedent to this Agreement. Subrecipient shall post in a prominent place at its offices a statement setting forth their drug-free workplace policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violating the policy. Subrecipient shall establish a drug free awareness program to inform employees about each of the following: (a) the dangers of drug abuse in the workplace; (b) the policy of maintaining a drug free workplace; (c) the availability of drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations.

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

8. **ENDORSEMENT.** Subrecipient shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements or creating any advertisement or writing that identifies or refers to City as the user of a product or service, without obtaining the prior written approval of City, which approval may be given or withheld in City's sole and absolute discretion.

9. **EQUAL BENEFITS ORDINANCE.** In accordance with City's Equal Benefits Ordinance, codified in SDMC sections 22.4301-22.4308 ("EBO"), Subrecipient shall provide and maintain equal benefits, as defined in SDMC section 22.4302 during the Term. Failure of Subrecipient to maintain equal benefits consistent with the EBO is an Event of Default by Subrecipient (SDMC 22.4304(e)). Subrecipient shall notify its employees of the equal benefits policy at the time of hire and during open enrollment

periods and must post a copy of the following statement in an area frequented by its employees:

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

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

10. **CONFLICT OF INTEREST.** Subrecipient and its Subcontractors shall comply with all Federal, State, and City conflict of interest laws, regulations, and policies applicable to this Agreement, including the applicable provisions of each of the following: (a) the conflict of interest provisions of 24 C.F.R. § 570.611 or 2 C.F.R. § 200.318; (b) California Government Code sections 1090 - 1099 or sections 81000 - 91014; and (c) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) or sections 5230 – 5240 (applicable to nonprofit public benefit corporations).

10.1 Public Officer or Employee Economic Interests. The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If Subrecipient becomes aware during the Term of any financial or economic interest of any public officer or employee of City relating to this Agreement, Subrecipient shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to immediately terminate this Agreement by giving Notice of termination to Subrecipient.

10.2 Statements of Economic Interests. In performing its obligations under in this Agreement, if an employee or representative of Subrecipient makes or participates in a “governmental decision,” as described in title 2, section 18701(a)(2) of the California Code of Regulations or performs the same (or substantially all the same) duties for City that would otherwise be performed by a City employee holding a position specified in City’s conflict of interest code, that Person shall be subject to City’s conflict of interest code, requiring the filing of one or more statements of economic interests disclosing such person’s relevant financial interests. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 (“Form 700”) and filed with the City Clerk. Each Person required to file a Form 700 shall do so within thirty (30) calendar days after City’s determination that such Person is subject to City’s conflict of interest code (“Assuming Office Statement”). All required Persons shall also file a Form 700 on or before each April 1 (“Annual Statement”) disclosing any and all financial interests held during the previous calendar year for which the Person was subject to City’s conflict of interest code.

10.3 City Conflict of Interest Restrictions. If City requires any employee or representative of Subrecipient to file a Form 700, that Person shall be considered a “City Official,” subject to the provisions of City’s Ethics Ordinance (SDMC sections 27.3501-27.3595), including the prohibition against lobbying City for one (1) year following the expiration or termination of this Agreement. Subrecipient shall

establish, and make known to its employees and representatives, appropriate safeguards to prohibit them from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Subrecipient's personnel employed in performing Subrecipient's obligations under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Subrecipient shall not recommend or specify any product, supplier, or contractor with whom Subrecipient or any of its employees or representatives has or have a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. If Subrecipient or any of its employees or representatives violate any conflict of interest law, regulation or policy or any of the provisions of this EXHIBIT D, Section 10, Subrecipient shall be liable to City for Legal Costs and all damages sustained by City as a result of the violation.

11. **OPERATING MANUAL.** Subrecipient acknowledges receipt of and shall comply with the Operating Manual, including those provisions related to fiscal accountability, eligible and ineligible expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, bonding requirements, and other administrative functions. Any desired changes to the procedures set forth in the Operating Manual must be requested by Subrecipient in writing and approved by City in writing, in City's sole and absolute discretion, before such changes may be implemented.

EXHIBIT E
FEDERAL CONTRACT PROVISIONS

1. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** Subrecipient shall comply with 24 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as modified by 24 C.F.R. § 570.502.

2. **GENERAL FEDERAL CDBG PROGRAM REQUIREMENTS.** Subrecipient shall comply with all Federal laws and regulations described in 24 C.F.R. § 570, including subpart K (sections 570.600-570.614), except that: (a) Subrecipient does not assume City's environmental responsibilities described at 24 C.F.R. § 570.604; and (b) Subrecipient does not assume City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.

3. **LOBBYING AND POLITICAL ACTIVITIES.** Subrecipient shall not use any of the CDBG Funds provided to it under this Agreement (including any Program Income) to pay any Person for influencing or attempting to influence any decision or election by any electorate, legislative body, government agency, grantee, bureau, board, commission, district, or any other instrument of Federal, state, city or other local government. The phrase "influencing or attempting to influence" means making, with the intent to influence, any communication to, or appearance before, a board, body, officer, or employee of a governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election. Subrecipient shall comply with 31 USC 1352 and 24 C.F.R. Part 87. Subrecipient shall sign and deliver to City the certification set forth in 24 C.F.R. Part 87, Appendix A, prior to entering into this Agreement, which certification shall be a condition precedent to this Agreement. Subrecipient shall also require this same certification to be included in all Subcontracts paid for with money advanced to Subrecipient pursuant to the City Grant. Additionally, Subrecipient shall disclose to City any funds from any other source paid by Subrecipient (or their respective principals or agents) to any Person, within the last year, for influencing or attempting to influence decisions of the Federal government, by completing, signing, and submitting to City, Standard Form LLL, "Disclosure of Lobbying Activities," found at 24 C.F.R. Part 87, Appendix B. Subrecipient understands that the duty to disclose lobbying activities is a continuing requirement and, therefore, shall make such disclosures at the end of each calendar quarter during the Term in which any activity requiring disclosure occurs or more often, if required by applicable Law.

4. **RECOGNITION OF FUNDING SOURCE.** Subrecipient shall ensure recognition of the role of the City Grant in financing the Improvements and the Business Accelerator. All publications relating to the Improvements or the Business Accelerator shall include the following statement: "This program is funded in whole or in part with Community Development Block Grant program funds provided by the U.S. Department of Housing and Urban Development to the City of San Diego."

5. **PLAYING BY THE RULES HANDBOOK.** By entering into this Agreement, Subrecipient acknowledges that Subrecipient has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth in such handbook.

6. **NO DISCRIMINATION.** Subrecipient shall comply with Title VI of the Civil Rights Act

of 1964 and the implementing regulations in 24 C.F.R. Part 1, Executive Order 11063, as amended by Executive Order 12259, and the implementing regulations in 24 C.F.R. Part 107, the California Fair Employment Practices Act, and any other applicable Federal or State law or regulation prohibiting discrimination on any basis enacted before or after the Effective Date. Subrecipient shall not discriminate on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing this Agreement, including in employment opportunities, the provision of labor, services, privileges, facilities, advantages, or accommodations. Subrecipient's failure to comply with the requirements of this EXHIBIT E, Section 6, shall be an Event of Default by Subrecipient.

7. **COPELAND "ANTI-KICKBACK" ACT.** As applicable, Subrecipient shall comply with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by the Department of Labor regulations at 29 C.F.R. Part 3.

8. **ENERGY POLICY AND CONSERVATION ACT.** As applicable, Subrecipient shall comply with the mandatory standards and policies relating to energy efficiency, contained in the State's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

9. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.** As applicable, Subrecipient shall comply with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387), for contracts in excess of \$150,000.

10. **RELIGIOUS ACTIVITIES.** Subrecipient shall comply with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including 24 C.F.R. § 570.200(j), referring to 24 C.F.R. § 5.109, and Executive Order 11245, as amended by Executive Order 13279.

11. **SECTION 3 CLAUSE.** If applicable under 24 C.F.R. § 135.3, then pursuant to 24 C.F.R. § 135.38, Subrecipient (and, if indicated below, City) shall comply with the following "Section 3 Clause":

11.1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

11.2. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

11.3. Subrecipient agrees to send to each labor organization or representative of workers with which Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers'

representative of Subrecipient's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the Person(s) taking applications for each of the positions and the anticipated date the work shall begin.

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

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

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

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

11.8. Subrecipient shall document its good faith efforts to comply with the terms and conditions of the above Section 3 Clause and furnish such documentation to City, upon request.

12. **REVERSION OF ASSETS.** Upon the expiration or termination of this Agreement, Subrecipient shall transfer to City any CDBG Funds (including Program Income) on hand at the time of such expiration or termination and relating to the City Grant. As applicable, Subrecipient shall comply with the requirements of 24 C.F.R. § 570.503(b)(7) regarding the use or disposition of any real property acquired or improved with CDBG Funds in excess of \$25,000. If Subrecipient does not use the real property to meet one of the national objectives in 24 C.F.R. § 570.208 for at least five (5) years after the expiration or termination of this Agreement, Subrecipient shall pay City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of funds other than CDBG Funds for the acquisition of, or improvement to, the property.

13. **FAIR HOUSING ACT.** As applicable, Subrecipient shall comply with Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), age or disability. Subrecipient shall post in a prominent place at its offices the Equal Housing Opportunity Logo provided by City, which may be obtained through the City's Economic Development Department, and any other fair housing materials provided by City during the Term.

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

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

16. **LEAD-BASED PAINT.** As applicable, Subrecipient shall comply with 24 C.F.R. § 570.608 relating to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R.

EXHIBIT F
CONSTRUCTION REQUIREMENTS

1. Definitions.

1.1. *Declaration.* That certain “Declaration of Covenants, Conditions and Restrictions Restricting Use of Property” to be entered into by and between City and Subrecipient and recorded against the subject real property, substantially in the form of EXHIBIT G attached to this Agreement.

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

1.3. *Notice to Proceed.* Notice from City to Subrecipient that all conditions precedent to commencement of construction of the Improvements under this Agreement have been satisfied or waived.

1.4. *Prime Contractor.* Any Subcontractor that is acting as a general contractor or prime contractor for construction of the Improvements.

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

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

4. Pre-Construction Actions. Subrecipient shall not begin work on the Improvements, unless and until: (a) Subrecipient obtains all required Approvals from City and other Governments with jurisdiction over construction of the Improvements; (b) City approves all final construction plans and specifications for construction of the Improvements; (c) City reviews and approves all Subcontracts proposed by Subrecipient for construction of the Improvements; and (d) Subrecipient holds a pre-construction meeting with the City Representative, any Third Person Prime Contractor, and all Subcontractors expected to participate in construction of the Improvements (collectively, “Pre-Construction Requirements”). Subrecipient shall complete all of the Pre-Construction Requirements and Notify City of such completion. Upon City’s confirmation of Subrecipient’s completion of all of the Pre-Construction Requirements, City shall issue a Notice to Proceed to Subrecipient. Under no circumstances shall Subrecipient or any Subcontractor commence

construction of the Improvements, unless and until Subrecipient receives Notice to Proceed from City.

5. Commencement of Construction. Within thirty (30) days after the date of City issuance of a Notice to Proceed, Subrecipient shall commence construction of the Improvements in accordance with the terms, conditions and covenants of this Agreement.
6. Construction Schedule. Subrecipient is responsible for ensuring that construction of the Improvements proceeds to completion within the Term. Completion of the Improvements shall be evidenced by Subrecipient recording a Notice of Completion in accordance with California Civil Code section 8182 or section 9204, as applicable, and City issuance of a final Certificate of Occupancy for the Improvements, if applicable, or alternatively, final City inspector sign-off on the Improvements, if a Certificate of Occupancy is not required for the Improvements. Subrecipient is also responsible for ensuring that written reports are completed on a regular basis, that any Prime Contractor's and any and all Subcontractors' requests for progress payments are reviewed before payments are made, and that necessary change orders are prepared and submitted to City for approval, prior to implementation.
7. Maintenance of Documents. Subrecipient is responsible for ensuring maintenance of all written guarantees and warranties, instruction books, diagrams, charts, and a maintenance manuals relating to construction of the Improvements following completion of the Improvements.
8. Scope of Work Changes. Should circumstances require and the Parties agree, in their respective sole and absolute discretion, that the scope of the Improvements should be changed or amended, such change or amendment shall be accomplished only as follows: (a) a change to the scope of the Improvements that does not affect the total amount to be paid or reimbursed to Subrecipient under this Agreement shall be accomplished by a written "Scope of Work Adjustment" form provided by City that is signed by the authorized representatives of both City and Subrecipient; or (b) a change to the scope of the Improvements that increases the total amount to be paid or reimbursed to Subrecipient under this Agreement shall be made by a written amendment to this Agreement in accordance with Section 28.19.
9. Builder's Risk Insurance. During construction of the Improvements, Subrecipient shall obtain and maintain builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Improvements. Builder's Risk Insurance coverage shall commence at the time of contractor mobilization for the Improvements. Builder's Risk Insurance shall be subject to the provisions of EXHIBIT C attached to this Agreement.
10. City Prevailing Wage Requirements. Subrecipient and all Subcontractors shall comply with SDMC section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 (State prevailing wage law) for any and all construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and for

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

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

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

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

this Agreement, such wage rate shall apply to the balance of the term of this Agreement.

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

10.3. *Payroll Records.* Subrecipient and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Subrecipient shall, and shall require its Subcontractors to, comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR, and submitting certified payroll records to City through City's web-based Labor Compliance Program (described in this EXHIBIT F, Section 10.8). Further, Subrecipient and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Subrecipient is responsible for ensuring that its Subcontractors submit certified payroll records to City, the Labor Commissioner and DIR.

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

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

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

10.7. *Labor Code Section 1861 Certification.* In accordance with California Labor Code section 3700, Subrecipient and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Subrecipient and each of its Subcontractors certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for

workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Subrecipient shall include this certification by each Subcontractor in each contract with a Subcontractor.

10.8. *Labor Compliance Program.* City has its own Labor Compliance Program authorized in August 2011 by DIR. City will withhold payments to Subrecipient when payroll records are delinquent or deemed inadequate by City or another governmental entity, or it has been established, after an investigation by City or another governmental entity, that underpayment(s) have occurred. For questions or assistance, please contact City's Equal Opportunity Contracting Department at 619-236-6000.

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

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

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

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

10.10. *Stop Order.* If Subrecipient or its subcontractor(s) engage in any work without having been registered in violation of California Labor Code sections 1725.5

or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is/are registered. Failure to observe a stop order is a misdemeanor.

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

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

10.12.1. **Registration.** Subrecipient will not be required to register with the DIR for small projects. (California Labor Code section 1771.1).

10.12.2. **Certified Payroll Records.** The records required in California Labor Code section 1776 shall be required to be kept and submitted to City, but will not be required to be submitted online with the DIR directly. Subrecipient will need to keep those records for at least three years following the completion of the subject work. (California Labor Code section 1771.4).

10.12.3. **List of all Subcontractors.** Subrecipient will not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in EXHIBIT F, Section 10.11. (California Labor Code section 1773.3).

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

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

11. **Federal Davis-Bacon Act Compliance.** Subrecipient and each Subcontractor shall comply with the Federal "Davis-Bacon Act" (40 USC sections 3141-3144 and sections 3146-3148), as supplemented by Department of Labor regulations (29 C.F.R. Part 5), for construction contracts in excess of \$2,000. Subrecipient and each Subcontractor shall ensure that all laborers and mechanics performing work relating to the Activity are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Davis-Bacon Act are imposed by State, City or

other local law, nothing in this EXHIBIT F, Section 11, is intended to relieve Subrecipient or any Subcontractor of the obligation, if any, to pay the higher wage rate. Subrecipient and each Subcontractor shall submit certified payroll records to City on a weekly basis, including the original statements of compliance.

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

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by City's contracting officer, advising the labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive

Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

13. Declaration. In accordance with 24 C.F.R. § 570.505, if the Activity involves the acquisition or improvement of real property with more than \$25,000 of CDBG Funds, Subrecipient shall make and enter into the Declaration and authorizes City to record the Declaration in the official records of the County with respect to the subject real property, all before City disburses any CDBG Funds to Subrecipient pursuant to this Agreement. Subrecipient represents and warrants to City that Subrecipient has the, right, power, and authority to make and enter into the Declaration and authorize City to record the Declaration in the official records of the County with respect to the subject real property.

EXHIBIT G

DECLARATION (Form)

[Attached behind this cover page.]

RECORDING REQUESTED BY WHEN RECORDED MAIL TO:	
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SPACE ABOVE LINE FOR RECORDER'S USE ONLY

EXEMPT FROM RECORDING FEES PURSUANT TO GOVT. CODE §27383

**CITY OF SAN DIEGO
 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 RESTRICTING USE OF PROPERTY
 ([INSERT SUBRECIPIENT NAME OR PROPERTY IDENTIFICATION])**

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

RECITALS

- A. Declarant [owns fee title to or holds a leasehold interest pursuant to that certain **[INSERT DESCRIPTION OF LEASE AGREEMENT]** ("Lease")] in that certain real property and improvements specifically described in Exhibit "A" attached to this Declaration ("Property");
- B. Declarant obtained a grant from City funded with United States Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") program funds;
- C. Declarant intends to use the grant proceeds to improve the Property pursuant to that certain Fiscal Year 2019 City of San Diego Community Development Block Grant Subrecipient Agreement, dated July 1, 2018, between Declarant and City ("Agreement");
- D. CDBG program regulations at 24 C.F.R. § 570.505 prohibit changing the use or planned use of real property acquired or improved, in whole or in part, with more than \$25,000 of CDBG grant funds;
- E. Declarant is willing to enter into and make this Declaration to assure City of the use of the Property for the Intended Use (defined in Section 1) for at least five (5) years after Declarant's improvement of the Property with the CDBG grant proceeds received from

City pursuant to the Agreement;

F. This Declaration shall restrict the use of the Property following the date of the first recording of this Declaration in the official records of the County of San Diego, California (“Recording Date”), to ensure that the Property shall, at all times from and after the Recording Date, until expiration of this Declaration, be used for the Intended Use;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS DECLARATION AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, DECLARANT COVENANTS, DECLARES AND AGREES FOR THE BENEFIT OF CITY, AS FOLLOWS:

1. **DEFINITIONS.** As used in this Declaration, the following words, terms or phrases shall have the meaning provided in the initial paragraph of this Declaration, the Recitals, or in this Section 1, unless the specific context of usage of a particular word, term or phrase may otherwise require:

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

1.2 **Agreement.** Defined in Recital C.

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

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

1.5 **CDBG.** Defined in Recital A.

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

1.7 **City.** Defined in the initial paragraph of this Declaration.

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

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

1.10 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of

action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if Declarant improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

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

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

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

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

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

1.16 **Declarant.** Defined in the initial paragraph of this Declaration.

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

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

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

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

including ambient air, soil, soil vapor, groundwater, surface water or land use.

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

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

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

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

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

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

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

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

1.27 HUD. Defined in Recital A.

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

1.29 **Indemnitee.** Any Person entitled to be Indemnified by Declarant under the terms of this Declaration.

1.30 **Intended Use.** The use(s) described in Exhibit “B” attached to this Declaration.

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

1.32 **Lease.** Defined in Recital B.

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

1.34 **Monetary Default.** Any failure by Declarant to pay or deposit, when and as this Declaration requires, any amount of money or evidence of any insurance coverage required to be provided under this Declaration, whether to or with City or a Third Person.

1.35 **Non-Monetary Default.** The occurrence of any of the following described events, except to the extent constituting a Monetary Default: (a) Declarant’s failure to perform any of Declarant’s obligations under this Declaration; (b) Declarant’s failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Declaration; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, would constitute a breach of this Declaration by Declarant.

1.36 **Notice.** Any consent, demand, designation, election, notice or request relating to this Declaration. All Notices must be in writing.

1.37 **Notify.** To give a Notice.

1.38 **Parties.** Collectively, City and Declarant.

1.39 **Party.** Individually, either City or Declarant, as applicable.

1.40 **Person.** Any association, corporation, governmental entity or agency,

individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.41 **Property.** Defined in Recital A.

1.42 **Recital.** Defined in the initial paragraph of this Declaration.

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

1.44 **Recording Date.** Defined in Recital I.

1.45 **State.** The State of California.

1.46 **Term.** The period of time beginning on the Recording Date and ending on the fifth (5th) anniversary of Declarant's completion of the improvement of the Property with CDBG funds received from City pursuant to the Agreement.

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

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

2. **CDBG COVENANTS AND RESTRICTIONS.**

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

2.2 Agreement to Record. Declarant agrees that City may record or cause the recording of this Declaration against the Property in the official records of County.

2.3 CDBG Restrictive Covenants. Subject to the terms, conditions and provisions of this Declaration, Declarant covenants to and for the benefit of City that Declarant shall acquire, improve, develop, own, manage and operate, or cause the management and operation of, the Property at all times during the Term, for the Intended Use and excluding any use inconsistent with the Intended Use.

2.4 Abandonment. Declarant shall not abandon or surrender the operation of all or any part of the Property for the Intended Use during the Term, except due to material casualty or Condemnation that reasonably justifies such abandonment or surrender.

2.5 Compliance. Declarant shall, at all times during the Term and at Declarant's

sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. **MONITORING.** City shall have the right, but not the obligation, to monitor and enforce the obligations of Declarant under this Declaration.

4. **HAZARDOUS SUBSTANCES.**

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

4.2 Compliance; Clean-Up. Declarant shall, at Declarant's sole cost and expense: (a) comply with all Environmental Laws applicable to the Property and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under any Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify the City Parties against any Hazardous Substance Discharge or violation of Environmental Law, in accordance with Section 5. Declarant's obligations under this Section 4 shall not limit Declarant's rights against Third Persons (exclusive of the City Parties).

5. **INDEMNITY.**

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

5.2 No City Liability. During the Term: (a) Declarant is and shall be responsible for operation of the Property; and (b) City shall not be liable for any injury or damage to any property (of Declarant or any other Person) or any Person occurring on or about the Property, except to the extent caused solely by City's gross negligence.

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

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

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

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

7. **COVENANTS RUN WITH THE LAND**. Declarant declares its specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Declaration are part of a plan for the implementation of CDBG eligible activities pursuant to 24 C.F.R. §§ 570.1 through 570.913 within the territorial jurisdiction of City, and that each shall be deemed covenants running with the land of the Property, binding upon each successor-in-interest of Declarant in the Property for the duration of the Term and for the exclusive benefit of City. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Declaration touch and concern the land of the Property and each of them is expressly declared to be for the benefit and in favor of City for the duration of the Term pursuant to the authority of 24 C.F.R. § 570.505, regardless of whether City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. City, in the event of any Default under this Declaration, has the right to exercise all of the rights and remedies and maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such Default, as provided in this Declaration. Declarant expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the conditions and restrictions set forth in this Declaration. Each and every contract, deed or other instrument hereafter made, entered into or performed covering or conveying all or any portion of the Property or any interest in the Property shall incorporate all of the provisions of this Declaration, either expressly or by reference. Each and every contract, deed or other instrument transferring any estate or interest in the Property shall conclusively be deemed to have been made, entered into, performed, delivered and accepted subject to the agreements, covenants, conditions, reservations and restrictions of this Declaration, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced in such contract, deed or other instrument.

8. REMEDIES.

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

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

8.1.2 **Suits Before End of Term.** City may sue Declarant for damages or other relief, from time to time, without terminating this Declaration, including action in mandamus, specific performance, or other suit, action or proceeding at law or in equity, to require Declarant to perform the covenants or agreements or observe the conditions or restrictions of this Declaration, or enjoin any acts or things that may be unlawful or in violation of the rights of or benefits to City under this Declaration, or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Declaration. Nothing in this Section 8.1.2 shall be construed to prohibit City from suing Declarant following expiration or termination of the Term, subject to applicable laws.

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

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

8.1.5 **Damages.** City may recover from Declarant all damages City incurs by reason of Declarant's Default and reimbursement of City's reasonable out of

pocket costs, including Legal Costs. City may recover such damages at any time after Declarant's Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, City need not commence separate actions to enforce Declarant's obligations for each amount or payment not paid or each month's accrual of damages or costs for Declarant's Default, but may bring and prosecute a single combined action for all such damages and costs.

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

8.2 Specific Enforcement. Declarant agrees that potential monetary damages to City would be difficult, if not impossible, to evaluate or quantify upon Declarant's Non-Monetary Default under this Declaration. Therefore, in addition to any other relief to which City may be entitled as a consequence of Declarant's Non-Monetary Default under this Declaration, Declarant agrees to the imposition of the remedy of specific performance against Declarant under this Declaration.

8.3 Enforcement. City shall have the exclusive power to enforce this Declaration and no other Person shall have any right or power to enforce any provision of this Declaration on behalf of City or to compel City to enforce any provision of this Declaration against Declarant or the Property.

9. GENERAL PROVISIONS.

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

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

the Property.

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

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

9.5 Non-liability of City Officials or Employees. No City Party shall be personally liable to Declarant or any successor in interest to Declarant, in any manner under this Declaration.

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

9.7 Amendment. This Declaration may be amended only by a written instrument signed by both Parties.

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

9.9 Attorney's Fees. If a Party brings a legal action to enforce this Declaration or otherwise arising out of this Declaration, the prevailing Party in such action shall be entitled to recover Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such legal action, from the other Party. For the purposes of this Declaration, in the case of City, Legal Costs include the salaries,

costs and overhead of the lawyers employed in the office of the City Attorney who are legal counsel to City in such an action.

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

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

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

9.13 Notices. Any and all Notices sent by a Party to another Party pursuant to or as required by this Declaration shall be proper, if in writing and transmitted to the address of the Party designated in Exhibit "C" attached to this Declaration, by one or more of the following methods: (a) messenger for immediate personal delivery, (b) a nationally recognized overnight (one business day) delivery service (i.e., Federal Express, United Parcel Service, etc.) or (c) registered or certified United States Postal Service first-class mail, postage prepaid, and return receipt requested. Notices may be sent in the same manner to such other addresses as a Party may from time to time designate by Notice, in accordance with this Section 9.13. A Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the date the Notice is delivered by personal delivery, on the date the Notice is delivered (or the date of the second attempted delivery, as set forth in a written statement of the delivery service) by a nationally recognized overnight delivery service, or three (3) calendar days after the Notice is deposited with the United States Postal Service for delivery as provided in this Section 9.13. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no Notice was given, shall be deemed receipt of the Notice. Any attorney representing a Party may give any Notice on behalf of such Party. The authorized addresses for the submission of Notices to the Parties, as of the date of this Declaration, are set forth in Exhibit "C" attached to this Declaration.

9.14 Pages and Exhibits. This Declaration includes thirteen (13) pages and three (3) attached exhibits.

9.15 Integration. This Declaration constitutes the entire understanding and integrates all of the terms, conditions, covenants, restrictions, reservations, terms, provisions and agreements of the Parties regarding the subject matter of this Declaration, and supersedes all prior negotiations or previous agreements between the Parties with respect to the subject matter of this Declaration.

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

[Remainder of page intentionally blank. Signatures appear on following page.]

**SIGNATURE PAGE
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])**

IN WITNESS WHEREOF, Declarant has signed, made and entered into this Declaration by and through the signatures of its authorized representative(s), as set forth below:

Declarant:

[TO BE INSERTED]

**EXHIBIT "A"
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])**

Property Legal Description

[TO BE INSERTED]

**EXHIBIT "B"
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])**

Intended Use

[TO BE INSERTED]

**EXHIBIT "C"
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])**

Notice Addresses

[TO BE INSERTED]

If to Declarant:

If to City:

City of San Diego
Economic Development Department
1200 Third Avenue, 14th Floor
San Diego, CA 92101
Attention: CDBG Program Manager

"General Decision Number: CA20200001 01/03/2020

Superseded General Decision Number: CA20190001

State: California

Construction Types: Building, Heavy (Heavy and Dredging),
Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least

the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

ASBE0005-002 07/01/2019

	Rates	Fringes
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Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	\$ 43.77	22.48
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	\$ 27.92	18.31

ASBE0005-004 07/01/2019

	Rates	Fringes
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Asbestos Removal
 worker/hazardous material
 handler (Includes
 preparation, wetting,
 stripping, removal,
 scrapping, vacuuming, bagging
 and disposing of all
 insulation materials from
 mechanical systems, whether
 they contain asbestos or not)....\$ 20.63 12.17

 BOIL0092-003 03/01/2018

	Rates	Fringes
BOILERMAKER.....	\$ 44.07	33.52

 BRCA0004-008 11/01/2018

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	\$ 38.21	17.44

 BRCA0018-004 06/01/2019

	Rates	Fringes
MARBLE FINISHER.....	\$ 33.43	14.11
TILE FINISHER.....	\$ 28.23	12.65
TILE LAYER.....	\$ 40.07	18.36

 BRCA0018-010 09/01/2018

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 31.25	13.41
TERRAZZO WORKER/SETTER.....	\$ 38.39	14.18

CARP0409-002 07/01/2016

	Rates	Fringes
Diver		
(1) Wet.....	\$ 712.48	17.03
(2) Standby.....	\$ 356.24	17.03
(3) Tender.....	\$ 348.24	17.03
(4) Assistant Tender.....	\$ 324.24	17.03

Amounts in "'Rates' column are per day

CARP0409-008 08/01/2010

	Rates	Fringes
Modular Furniture Installer.....	\$ 17.00	7.41

CARP0547-001 07/01/2018

	Rates	Fringes
CARPENTER		
(1) Bridge.....	\$ 42.34	19.17
(2) Commercial Building....	\$ 37.11	19.17
(3) Heavy & Highway.....	\$ 42.21	19.17
(4) Residential Carpenter..	\$ 29.69	19.17
(5) Residential		
Insulation Installer.....	\$ 18.00	8.16
MILLWRIGHT.....	\$ 48.71	19.17
PILEDRIVERMAN.....	\$ 42.34	19.17

CARP0547-002 07/01/2017

	Rates	Fringes
Drywall		
(1) Work on wood framed		

construction of single family residences, apartments or condominiums under four stories

Drywall Installer/Lather...	\$ 22.95	18.85
Drywall Stocker/Scrapper...	\$ 12.50	12.27
(2) All other work		
Drywall Installer/Lather...	\$ 32.00	17.63
Drywall Stocker/Scrapper...	\$ 12.50	12.27

ELEC0569-001 06/03/2019

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer.....	\$ 50.81	3%+13.63
Electrician.....	\$ 50.06	3%+13.63
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer.....	\$ 45.75	3%+14.88
Electrician.....	\$ 45.00	3%+14.88

ELEC0569-004 08/26/2019

	Rates	Fringes
ELECTRICIAN (Sound & Communications Sound Technician).....	\$ 32.95	13.02

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for

class two wiring for private, commercial, or industrial use furnished by leased wire, freuency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

 ELEC0569-005 08/26/2019

Rates Fringes

Sound & Communications

 Sound Technician.....\$ 32.95 13.02

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, freuency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

SOUND TECHNICIAN: Terminating, operating and performing final check-out

ELEC0569-006 10/01/2018

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
Traffic signal, street light and underground work		
Utility Technician #1.....	\$ 32.44	8.67
Utility Technician #2.....	\$ 27.05	8.51

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

ELEC0569-008 06/03/2019

	Rates	Fringes
ELECTRICIAN (Residential, 1-3 Stories).....	\$ 34.69	7.65

* ELEC1245-001 06/01/2019

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..\$ 58.09		19.36
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....\$ 46.40		18.17
(3) Groundman.....\$ 35.47		17.79
(4) Powderman.....\$ 49.55		3%+17.65

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day,
Independence Day, Labor Day, Veterans Day, Thanksgiving Day
and day after Thanksgiving, Christmas Day

ELEV0018-001 01/01/2019

	Rates	Fringes
ELEVATOR MECHANIC.....\$ 55.58		34.125

FOOTNOTE:

PAID VACATION: Employer contributes 8% of regular hourly
rate as vacation pay credit for employees with more than 5
years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day,
Labor Day, Veterans Day, Thanksgiving Day, Friday after
Thanksgiving, and Christmas Day.

ENGI0012-003 07/01/2018

	Rates	Fringes
OPERATOR: Power Equipment		
(All Other Work)		
GROUP 1.....	\$ 45.30	25.25
GROUP 2.....	\$ 46.08	25.25
GROUP 3.....	\$ 46.37	25.25
GROUP 4.....	\$ 47.86	25.25
GROUP 5.....	\$ 48.96	25.25
GROUP 6.....	\$ 48.08	25.25
GROUP 8.....	\$ 48.19	25.25
GROUP 9.....	\$ 49.29	25.25
GROUP 10.....	\$ 48.31	25.25
GROUP 11.....	\$ 49.41	25.25
GROUP 12.....	\$ 48.48	25.25
GROUP 13.....	\$ 48.58	25.25
GROUP 14.....	\$ 48.61	25.25
GROUP 15.....	\$ 48.69	25.25
GROUP 16.....	\$ 48.81	25.25
GROUP 17.....	\$ 48.98	25.25
GROUP 18.....	\$ 49.08	25.25
GROUP 19.....	\$ 49.19	25.25
GROUP 20.....	\$ 49.31	25.25
GROUP 21.....	\$ 49.48	25.25
GROUP 22.....	\$ 49.58	25.25
GROUP 23.....	\$ 49.69	25.25
GROUP 24.....	\$ 49.81	25.25
GROUP 25.....	\$ 49.98	25.25

OPERATOR: Power Equipment

(Cranes, Piledriving & Hoisting)

GROUP 1.....	\$ 46.65	25.25
GROUP 2.....	\$ 47.43	25.25
GROUP 3.....	\$ 47.72	25.25
GROUP 4.....	\$ 47.86	25.25
GROUP 5.....	\$ 48.08	25.25
GROUP 6.....	\$ 48.19	25.25

GROUP 7.....	\$ 48.31	25.25
GROUP 8.....	\$ 48.48	25.25
GROUP 9.....	\$ 48.65	25.25
GROUP 10.....	\$ 49.65	25.25
GROUP 11.....	\$ 50.65	25.25
GROUP 12.....	\$ 51.65	25.25
GROUP 13.....	\$ 52.65	25.25

OPERATOR: Power Equipment

(Tunnel Work)

GROUP 1.....	\$ 47.15	25.25
GROUP 2.....	\$ 47.93	25.25
GROUP 3.....	\$ 48.22	25.25
GROUP 4.....	\$ 48.39	25.25
GROUP 5.....	\$ 48.58	25.25
GROUP 6.....	\$ 48.69	25.25
GROUP 7.....	\$ 48.81	25.25

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes load, lull or similar types under 5 tons;

Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant

engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger

or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000

auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator;
Remote- control earth-moving equipment operator (operating
a second piece of equipment: \$1.00 per hour additional);
Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator,
operating equipment with push-pull system (single engine,
Caterpillar, Euclid, Athey Wagon and similar types with any
and all attachments over 25 yds. and up to and including 50
yds. struck); Rubber-tired earth-moving equipment operator,
operating equipment with push-pull system (multiple
engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator,
operating equipment with push-pull system (single engine,
over 50 yds. struck); Rubber-tired earth-moving equipment
operator, operating equipment with push-pull system
(multiple engine, Euclid, Caterpillar and similar, over 25
yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator,
operating equipment with push-pull system (multiple engine,
Euclid, Caterpillar and similar, over 50 cu. yds. struck);
Tandem tractor operator (operating crawler type tractors in
tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator,
operating in tandem (scrapers, belly dumps and similar
types in any combination, excluding compaction units -
single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types);
Rubber-tired earth-moving equipment operator, operating in
tandem (scrapers, belly dumps and similar types in any
combination, excluding compaction units - single engine,
Caterpillar, Euclid, Athey Wagon and similar types with any
and all attachments over 25 yds. and up to and including 50
cu. yds. struck); Rubber-tired earth-moving equipment

operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid,

Caterpillar and similar, over 25 yds. and up to 50 yds.
struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired
earth-moving equipment operator, operating equipment with
the tandem push-pull system (multiple engine, Euclid,
Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed,
lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier
operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator;
Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western
or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Creter crane operator; Hoist
operator (Chicago boom and similar type); Lift mobile
operator; Lift slab machine operator (Vagtborg and similar
types); Material hoist and/or manlift operator; Polar
gantry crane operator; Self Climbing scaffold (or similar
type); Shovel, backhoe, dragline, clamshell operator (over
3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline,
clamshell operator (over 5 cu. yds. mrc); Tower crane
repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton
capacity); Crawler transporter operator; Derrick barge

operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons);

Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1,

T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO,
KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a thin strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

ENGI0012-004 08/01/2015

Rates Fringes

OPERATOR: Power Equipment
(DREDGING)

(1) Leverman.....\$ 49.50 23.60

(2) Dredge dozer.....	\$ 43.53	23.60
(3) Deckmate.....	\$ 43.42	23.60
(4) Winch operator (stern winch on dredge).....	\$ 42.87	23.60
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 42.33	23.60
(6) Barge Mate.....	\$ 42.94	23.60

* IRON0377-002 07/01/2019

	Rates	Fringes
Ironworkers:		
Fence Erector.....	\$ 33.58	24.66
Ornamental, Reinforcing and Structural.....	\$ 40.00	33.30

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0089-001 07/01/2019

	Rates	Fringes
LABORER (BUILDING and all other Residential Construction)		
Group 1.....	\$ 32.92	19.54
Group 2.....	\$ 33.60	19.54
Group 3.....	\$ 34.31	19.54
Group 4.....	\$ 35.11	19.54
Group 5.....	\$ 37.04	19.54

LABORER (RESIDENTIAL CONSTRUCTION - See definition below)

(1) Laborer.....	\$ 30.82	17.87
(2) Cleanup, Landscape, Fencing (Chain Link & Wood).....	\$ 29.53	17.87

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominiums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and

air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction track laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filling of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh pulling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the chute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demolition); Guinea chaser; Headboard man-asphalt; Laborer, packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including drilling of same); Hydro seeder and similar type; Impact wrench, multi-plate; Kettlemen, potmen and men applying asphalt, lay-kold, creosote, lime caustic and similar type materials (applying means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibrating machines, pavement breakers, air blasting, come-along, and similar mechanical tools not separately classified herein; Pipelayers back up man

coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, asphalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller-all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LABO0089-002 11/01/2019

	Rates	Fringes
LABORER (MASON TENDER).....	\$ 32.00	18.28

LABO0089-004 07/01/2019

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
Group 1.....	\$ 34.04	19.54
Group 2.....	\$ 34.50	19.54
Group 3.....	\$ 34.91	19.54
Group 4.....	\$ 35.75	19.54
Group 5.....	\$ 39.02	19.54

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber, Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator,

cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-kold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket joints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabricks; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer - Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter, Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work. High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting,

Come-Alongs and similar mechanical tools, Remote-Controlled Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting, m makeing of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prfefabricated Manhole Installer, Sandblast Nozzleman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

LABO0300-005 01/01/2018

Rates

Fringes

Asbestos Removal Laborer.....\$ 33.19 17.78

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

* LABO0345-001 07/01/2019

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1.....	\$ 44.05	18.42
GROUP 2.....	\$ 43.10	18.42
GROUP 3.....	\$ 39.56	18.42

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0"" above base level and which work must be performed in whole or in part more than 75'-0"" above base level, that work performed above the 75'-0"" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

GROUP 3: Reboundmen

LABO1184-001 07/01/2019

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	\$ 36.70	15.05
(2) Vehicle Operator/Hauler.	\$ 36.87	15.05
(3) Horizontal Directional Drill Operator.....	\$ 38.72	15.05
(4) Electronic Tracking Locator.....	\$ 40.72	15.05
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	\$ 37.91	18.06
GROUP 2.....	\$ 39.21	18.06
GROUP 3.....	\$ 41.22	18.06
GROUP 4.....	\$ 42.96	18.06

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both

conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

LABO1414-003 08/07/2019

	Rates	Fringes
LABORER		
PLASTER CLEAN-UP LABORER....	\$ 34.82	20.02
PLASTER TENDER.....	\$ 37.37	20.02

Work on a swing stage scaffold: \$1.00 per hour additional.

Work at Military Bases - \$3.00 additional per hour:

Coronado Naval Amphibious Base, Fort Irwin, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg

AFB.

PAIN0036-001 07/01/2018

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Repaint (excludes San Diego County).....	\$ 27.59	14.92
(2) All Other Work.....	\$ 31.12	15.04

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

PAIN0036-010 10/01/2018

	Rates	Fringes
DRYWALL FINISHER/TAPER		
(1) Building & Heavy Construction.....	\$ 33.39	16.80
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories).....	\$ 24.02	17.01

PAIN0036-012 10/01/2018

Rates Fringes

GLAZIER.....\$ 43.55 19.72

PAIN0036-019 01/01/2019

Rates Fringes

SOFT FLOOR LAYER.....\$ 31.02 14.37

* PLAS0200-005 08/07/2019

Rates Fringes

PLASTERER.....\$ 43.73 16.03

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS
BASE, IMPERIAL BEACH NAVAL AIR STATION: \$3.00 additional
per hour.

PLAS0500-001 07/01/2018

Rates Fringes

CEMENT MASON/CONCRETE FINISHER

GROUP 1.....\$ 26.34 21.12
GROUP 2.....\$ 27.99 21.12
GROUP 3.....\$ 30.07 21.12

CEMENT MASONS - work inside the building line, meeting the
following criteria:

GROUP 1: Residential wood frame project of any size; work
classified as Type III, IV or Type V construction;
interior tenant improvement work regardless the size of the
project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 09/01/2018

	Rates	Fringes
PLUMBER, PIPEFITTER, STEAMFITTER		
Camp Pendleton.....	\$ 54.63	22.16
Plumber and Pipefitter All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work.....	\$ 50.13	22.16
Work ONLY on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space.....	\$ 48.58	21.18
Work ONLY on strip malls, light commercial, tenant improvement and remodel work.....	\$ 37.10	19.51

PLUM0016-011 09/01/2018

	Rates	Fringes
PLUMBER/PIPEFITTER		

Residential.....\$ 40.23 18.08

PLUM0345-001 09/01/2019

	Rates	Fringes
PLUMBER		
Landscape/Irrigation Fitter.\$	34.40	23.05
Sewer & Storm Drain Work....\$	34.40	23.05

ROOF0045-001 07/01/2019

	Rates	Fringes
ROOFER.....\$	34.25	9.10

* SFCA0669-001 04/01/2019

	Rates	Fringes
SPRINKLER FITTER.....\$	40.57	23.19

SHEE0206-001 07/01/2019

	Rates	Fringes
SHEET METAL WORKER		
Camp Pendleton.....\$	40.94	28.51
Except Camp Pendleton.....\$	38.94	28.51
Sheet Metal Technician.....\$	29.25	8.87

SHEET METAL TECHNICIAN - SCOPE:

- a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system
- b. New single family residential buildings including tracts.
- c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and

motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under \$1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

TEAM0166-001 09/01/2019

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 18.90	34.69
GROUP 2.....	\$ 26.49	34.69
GROUP 3.....	\$ 26.69	34.69
GROUP 4.....	\$ 26.89	34.69
GROUP 5.....	\$ 27.09	34.69
GROUP 6.....	\$ 27.59	34.69
GROUP 7.....	\$ 29.09	34.69

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +\$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Fuel Man, Swamper

GROUP 2: 2-axle Dump Truck, 2-axle Flat Bed, Concrete Pumping Truck, Industrial Lift Truck, Motorized Traffic Control, Pickup Truck on Jobsite

GROUP 3: 2-axle Water Truck, 3-axle Dump Truck, 3-axle Flat

Bed, Erosion Control Nozzleman, Dump Crete Truck under 6.5 yd, Forklift 15,000 lbs and over, Prell Truck, Pipeline Work Truck Driver, Road Oil Spreader, Cement Distributor or Slurry Driver, Bootman, Ross Carrier

GROUP 4: Off-road Dump Truck under 35 tons 4-axles but less than 7-axles, Low-Bed Truck & Trailer, Transit Mix Trucks under 8 yd, 3-axle Water Truck, Erosion Control Driver, Grout Mixer Truck, Dump Crete 6.5yd and over, Dumpster Trucks, DW 10, DW 20 and over, Fuel Truck and Dynamite, Truck Greaser, Truck Mounted Mobile Sweeper 2-axle Winch Truck

GROUP 5: Off-road Dump Truck 35 tons and over, 7-axles or more, Transit Mix Trucks 8 yd and over, A-Frame Truck, Swedish Cranes

GROUP 6: Off-Road Special Equipment (including but not limited to Water Pull Tankers, Athey Wagons, DJB, B70 Wuclids or like Equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their

own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in

the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

LABOR CODE

SECTION 1720-1743

1720. (a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(7) (A) Infrastructure project grants from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

(B) For purposes of this paragraph, the Public Utilities Commission is not the awarding body or the body awarding the contract, as defined in Section 1722.

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become

subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the home buyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, architectural, and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142(d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 (commencing with Section 50199.4) of Part 1 of Division 31 of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

1720.2. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public works" also means any

construction work done under private contract when all of the following conditions exist:

- (a) The construction contract is between private persons.
- (b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.
- (c) Either of the following conditions exist:
 - (1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.
 - (2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

1720.3. (a) For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

(b) For purposes of this section, the "hauling of refuse" includes, but is not limited to, hauling soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. The "hauling of refuse" shall not include the hauling of recyclable metals such as copper, steel, and aluminum that have been separated from other materials at the jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser.

1720.4. (a) This chapter shall not apply to any of the following work:

(1) Any work performed by a volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(b) This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2017, deletes or extends that date.

1720.6. For the limited purposes of Article 2 (commencing with

Section 1770) of this chapter, "public work" also means any construction, alteration, demolition, installation, or repair work done under private contract when the following conditions exist:

(a) The work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements.

(b) The work is performed on the property of the state or a political subdivision of the state.

(c) Either of the following conditions exists:

(1) More than 50 percent of the energy generated is purchased or will be purchased by the state or a political subdivision of the state.

(2) The energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a political subdivision of the state.

1721. "Political subdivision" includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

1722. "Awarding body" or "body awarding the contract" means department, board, authority, officer or agent awarding a contract for public work.

1722.1. For the purposes of this chapter, "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

1723. "Worker" includes laborer, worker, or mechanic.

1724. "Locality in which public work is performed" means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the political subdivision on whose behalf the contract is awarded in other cases.

1725. "Alien" means any person who is not a born or fully naturalized citizen of the United States.

1725.5. A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of three hundred dollars (\$300) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2) of this subdivision.

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work, as defined in this chapter, entered into on or after April 1, 2015.

1726. (a) The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

(c) A contractor may bring an action in a court of competent jurisdiction to recover from an awarding body the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties

required to be paid under this chapter, and costs and attorney's fees related to this action, if either of the following is true:

(1) The awarding body previously affirmatively represented to the contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a "public work," as defined in this chapter.

(2) The awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a "public work," as defined in this chapter, and failed to disclose that information to the contractor before the bid opening or awarding of the contract.

1727. (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

1728. In cases of contracts with assessment or improvement districts where full payment is made in the form of a single warrant, or other evidence of full payment, after completion and acceptance of the work, the awarding body shall accept from the contractor in cash a sum equal to, and in lieu of, any amount required to be withheld, retained, or forfeited under the provisions of this section, and said awarding body shall then release the final warrant or payment in full.

1729. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

1730. The Director of Industrial Relations shall post a list of every California code section and the language of those sections that relate to the prevailing rate of per diem wage requirements for workers employed on a public work project on the Internet Web site of the Department of Industrial Relations on or before June 1, 2013, and shall update that list each February 1 thereafter.

1734. Any court collecting any fines or penalties under the criminal provisions of this chapter or any of the labor laws pertaining to public works shall as soon as practicable after the receipt thereof deposit same with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month by warrant of the county auditor drawn upon requisition of the judge or clerk of said court, to the State Treasurer for deposit in the General Fund.

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.

1736. During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

1740. Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements.

1741. (a) If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor, or both. The assessment shall be in writing, shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c) (1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

1741.1. (a) The period for service of assessments shall be tolled for the period of time required by the Director of Industrial Relations to determine whether a project is a public work, including a determination on administrative appeal, if applicable, pursuant to subdivisions (b) and (c) of Section 1773.5. The period for service of assessments shall also be tolled for the period of time that a contractor or subcontractor fails to provide in a timely manner certified payroll records pursuant to a request from the Labor Commissioner or a joint labor-management committee under Section 1776, or an approved labor compliance program under Section 1771.5 or 1771.7.

(b) (1) The body awarding the contract for public work shall furnish, within 10 days after receipt of a written request from the

Labor Commissioner, a copy of the valid notice of completion for the public work filed in the office of the county recorder, or a document evidencing the awarding body's acceptance of the public work on a particular date, whichever occurs later, by first-class mail addressed to the office of the Labor Commissioner that is listed on the written request. If, at the time of receipt of the Labor Commissioner's written request, a valid notice of completion has not been filed by the awarding body in the office of the county recorder and there is no document evidencing the awarding body's acceptance of the public work on a particular date, the awarding body shall so notify the office of the Labor Commissioner that is listed on the written request. Thereafter, the awarding body shall furnish copies of the applicable document within 10 days after filing a valid notice of completion with the county recorder's office, or within 10 days of the awarding body's acceptance of the public work on a particular date.

(2) If the awarding body fails to timely furnish the Labor Commissioner with the documents identified in paragraph (1), the period for service of assessments under Section 1741 shall be tolled until the Labor Commissioner's actual receipt of the valid notice of completion for the public work or a document evidencing the awarding body's acceptance of the public work on a particular date.

(c) The tolling provisions in this section shall also apply to the period of time for commencing an action brought by a joint labor-management committee pursuant to Section 1771.2.

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other

judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) Notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

(d) This section shall become operative on January 1, 2007.

1743. (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the

Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

LABOR CODE

SECTION 1770-1784

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any workman employed on public work. Nothing in this act shall permit any overtime work in violation of Article 3 of this chapter.

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.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1771.1. (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

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

(g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

1771.2. (a) A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall be commenced not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

(b) (1) In an action brought pursuant to this section, the court shall award restitution to an employee for unpaid wages, plus interest, under Section 3289 of the Civil Code from the date that the wages became due and payable, and liquidated damages equal to the amount of unpaid wages owed, and may impose civil penalties, only against an employer that failed to pay the prevailing wage to its employees, in accordance with Section 1775, injunctive relief, or any other appropriate form of equitable relief. The court shall follow the same standards and have the same discretion in setting the amount of penalties as are provided by subdivision (a) of Section 1775. The court shall award a prevailing joint labor-management committee its reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees.

(2) An action pursuant to this section shall not be based on the employer's misclassification of the craft of a worker in its certified payroll records.

(3) Liquidated damages shall be awarded only if the complaint alleges with specificity the wages due and unpaid to the individual workers, including how that amount was calculated, and the defendant fails to pay the wages, deposit that amount with the court to be held in escrow, or provide proof to the court of an adequate surety bond to cover the wages, within 60 days of service of the complaint. Liquidated damages shall be awarded only on the wages found to be due and unpaid. Additionally, if the defendant demonstrates to the satisfaction of the court that the defendant had substantial grounds for contesting that a portion of the allegedly unpaid wages were owed, the court may exercise its discretion to waive the payment of the liquidated damages with respect to that portion of the unpaid wages.

(4) This subdivision does not limit any other available remedies for a violation of this chapter.

1771.3. (a) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury to be available upon appropriation of the Legislature. All registration fees collected pursuant to Section 1725.5 and any other moneys as are designated by statute or order shall be deposited in the fund for the purposes specified in subdivision (b).

(b) Moneys in the State Public Works Enforcement Fund shall be used only for the following purposes:

(1) The reasonable costs of administering the registration of contractors and subcontractors to perform public work pursuant to Section 1725.5.

(2) The costs and obligations associated with the administration and enforcement of the requirements of this chapter by the Department of Industrial Relations.

(3) The monitoring and enforcement of any requirement of this code by the Labor Commissioner on a public works project or in connection with the performance of public work as defined pursuant to this chapter.

(c) The annual contractor registration renewal fee specified in subdivision (a) of Section 1725.5, and any adjusted application or renewal fee, shall be set in amounts that are sufficient to support the annual appropriation approved by the Legislature for the State Public Works Enforcement Fund and not result in a fund balance greater than 25 percent of the appropriation. Any yearend balance in the fund greater than 25 percent of the appropriation shall be applied as a credit when determining any fee adjustments for the subsequent fiscal year.

(d) To provide adequate cashflow for the purposes specified in subdivision (b), the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, may approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Public Works Enforcement Fund.

(1) The maximum amount of the annual loan allowable may be up to, but shall not exceed 50 percent of the appropriation authority of the State Public Works Enforcement Fund in the same year in which the loan was made.

(2) For the purposes of this section, a "short-term loan" is a

transfer that is made subject to both of the following conditions:

(A) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(B) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

1771.4. (a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) of this section if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) (1) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(2) The requirements of paragraph (3) of subdivision (a) shall only apply to the following projects:

(A) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to the effective date of this section.

(B) Projects for which the initial contract is awarded on or after April 1, 2015.

(C) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records in accordance with paragraph (3) of subdivision (a).

(D) All projects, whether new or ongoing, on or after January 1, 2016.

1771.5. (a) Notwithstanding Section 1771, an awarding body may choose not to require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body has elected to initiate and has been approved by the Director of Industrial Relations to enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit

payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(7) The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations.

(d) For purposes of this chapter, the Director of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

1771.7. (a) (1) For contracts specified in subdivision (f), an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in

subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the payroll records shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Because the reasonable costs directly related to monitoring and enforcing compliance with the prevailing wage requirements are necessary oversight activities, integral to the cost of construction of the public works projects, notwithstanding Section 17070.63 of the Education Code, the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code for the costs of a new construction or modernization project shall include the state's share of the reasonable and directly related costs of the labor compliance program used to monitor and enforce compliance with prevailing wage requirements.

(f) This section shall only apply to contracts awarded prior to January 1, 2012.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1773. The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized

collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

1773.1. (a) Per diem wages, as the term is used in this chapter or in any other statute applicable to public works, includes employer payments for the following:

- (1) Health and welfare.
- (2) Pension.
- (3) Vacation.
- (4) Travel.
- (5) Subsistence.
- (6) Apprenticeship or other training programs authorized by

Section 3093, to the extent that the cost of training is reasonably related to the amount of the contributions.

(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue.

(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, credit shall not be granted for benefits required to be provided by other state or federal law, or for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a). Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of the following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.

(e) The credit for employer payments shall be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor

agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever they are filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) When a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.

In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

1773.3. (a) (1) An awarding agency shall provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter, within five days of the award.

(2) The notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the department specifies that aids in the administration and enforcement of this chapter.

(b) In lieu of responding to any specific request for contract award information, the department may make the information provided by awarding bodies pursuant to this section available for public review on its Internet Web site.

1773.4. Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and

transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

1773.5. (a) The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

(b) When a request is made to the director for a determination of whether a specific project or type of work awarded or undertaken by a political subdivision is a public work, he or she shall make that determination within 60 days receipt of the last notice of support or opposition from any interested party relating to that project or type of work that was not unreasonably delayed, as determined by the director. If the director deems that the complexity of the request requires additional time to make that determination, the director may have up to an additional 60 days if he or she certifies in writing to the requestor, and any interested party, the reasons for the extension. If the requestor is not a political subdivision, the requestor shall, within 15 days of the request, serve a copy of the request upon the political subdivision, in which event the political subdivision shall, within 30 days of its receipt, advise the director of its position regarding the request. For projects or types of work that are otherwise private development projects receiving public funds, as specified in subdivision (b) of Section 1720, the director shall determine whether a specific project or type of work is a public work within 120 days of receipt of the last notice of support or opposition relating to that project or type of work from any interested party that was not unreasonably delayed, as determined by the director.

(c) If an administrative appeal of the director's determination is made, it shall be made within 30 days of the date of the determination. The director shall issue a determination on the administrative appeal within 120 days after receipt of the last notice of support or opposition relating to that appeal from any interested party that was not unreasonably delayed, as determined by the director. The director may have up to an additional 60 days if he or she certifies in writing to the party requesting the appeal the reason for the extension.

(d) The director shall have quasi-legislative authority to determine coverage of projects or types of work under the prevailing wage laws of this chapter. A final determination on any administrative appeal is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure. These determinations, and any determinations relating to the general prevailing rate of per diem wages and the general prevailing rate for holiday, shift rate, and overtime work, shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.

1773.7. The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6.

1773.8. An increased employer payment contribution that results in

a lower taxable wage shall not be considered a violation of the applicable prevailing wage determination so long as all of the following conditions are met:

- (a) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.
- (b) The increased employer payment and hourly straight time and overtime wage combined are no less than the general prevailing rate of per diem wages.
- (c) The employer payment contribution is irrevocable unless made in error.

1773.9. (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:

(1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c) (1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of the predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a

request by the state or the political subdivision, do both of the following:

(1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.

(2) Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

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 two hundred dollars (\$200) 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 forty dollars (\$40) 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.

(ii) The penalty may not be less than eighty dollars (\$80) 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 one hundred twenty dollars (\$120) 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) If 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 this section and Sections 1771, 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 and the Division of Labor Standards Enforcement 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 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) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, 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) Except as provided in subdivision (f), 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 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 multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. 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 social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) 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.

(h) 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 one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of 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.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) 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.

1777. Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of section 1776 is guilty of a misdemeanor.

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(d) (1) In the event a contractor or subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or to be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(2) The Labor Commissioner shall consider, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating Section 1777.5, all of the following circumstances:

- (A) Whether the violation was intentional.
- (B) Whether the party has committed other violations of Section 1777.5.

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(e) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or deliberately refuses to comply with its provisions.

(f) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(g) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its

responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(h) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(i) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(j) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

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 (o).

(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 Administrator of Apprenticeship, 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 who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who 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 Administrator of Apprenticeship 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.

(l) 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 of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 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 Department of Industrial Relations 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 county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county 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 Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(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. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(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) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any 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 provided in Section 3077 of this code and Section 12940 of the Government Code.

1777.7. (a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner 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 within a three-year period, if 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.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d) of Section 1777.5, 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.

(b) The Labor Commissioner shall consider, in setting the amount of a monetary penalty, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(c) (1) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties assessed under subdivisions (a) and (b). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(2) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner may intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

(d) The determination of the Labor Commissioner as to the amount of the penalty imposed under subdivisions (a) and (b) shall be reviewable only for an abuse of discretion.

(e) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any 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 continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due to the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(f) 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 a complaint that a subcontractor on that public works project knowingly violated Section 1777.5.

(g) The interpretation of Section 1777.5 and the substantive requirements of this section applicable to contractors or subcontractors shall be in accordance with the regulations of the California Apprenticeship Council.

(h) The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties.

1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured,

or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

1780. Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a workman on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a "public work," as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a "public work."

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a "public work," as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the "public work" covered by the contract as a "public work," any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any nonconstruction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) "Awarding body" does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) "Increased costs" includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the "public work" as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).

1782. (a) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with the provisions of this article on any public works contract.

(b) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has awarded, within the prior two years, a public works contract without requiring the contractor to comply with all of the provisions of this article. This subdivision shall not apply if the charter city's failure to include the prevailing wage or apprenticeship requirement in a particular contract was inadvertent and contrary to a city charter provision or ordinance that otherwise requires compliance with this article.

(c) A charter city is not disqualified by subdivision (a) from receiving or using state funding or financial assistance for its construction projects if the charter city has a local prevailing wage ordinance for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements imposed by the provisions of this article and that do not authorize a contractor to not comply with this article.

(d) For purposes of this section, the following shall apply:

(1) A public works contract does not include contracts for projects of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or projects of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work.

(2) A charter city includes any agency of a charter city and any entity controlled by a charter city whose contracts would be subject to this article.

(3) A "construction project" means a project that involves the award of a public works contract.

(4) State funding or financial assistance includes direct state funding, state loans and loan guarantees, state tax credits, and any other type of state financial support for a construction project. State funding or financial assistance does not include revenues that charter cities are entitled to receive without conditions under the California Constitution.

(e) The Director of Industrial Relations shall maintain a list of charter cities that may receive and use state funding or financial assistance for their construction projects.

(f) (1) This section does not restrict a charter city from receiving or using state funding or financial assistance that was awarded to the city prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract that was awarded prior to January 1, 2015.

(2) A charter city is not disqualified by subdivision (b) from receiving or using state funding or financial assistance for its construction projects based on the city's failure to require a contractor to comply with this article in performing a contract the city advertised for bid or awarded prior to January 1, 2015.

1784. (a) Notwithstanding any other law, a contractor may bring an action in a court of competent jurisdiction to recover from the hiring party that the contractor directly contracts with, any increased costs attributable solely to the provisions of this chapter, including, but not limited to, the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties or other sums required to be paid under this chapter, and costs and attorney's fees for the action incurred by the contractor as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency, or a court that classifies, after the time at which the hiring party accepts the contractor's bid, awards the contractor a contract under circumstances when no bid is solicited, or otherwise allows construction by the contractor to proceed, the work covered by the project, or any portion thereof, as a "public work," as defined in this chapter, except to the extent that either of the following is true:

(1) The owner or developer or its agent expressly advised the contractor that the work to be covered by the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(2) The hiring party expressly advised the contractor that the work subject to the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing

wages.

(b) (1) To be entitled to the recovery of increased costs described in subdivision (a), the contractor shall notify the hiring party and the owner or developer within 30 days after receipt of the notice of a decision by the Department of Industrial Relations or the Labor and Workforce Development Agency, or the initiation of any action in a court alleging, that the work covered by the project, or any portion thereof, is a "public work," as defined in this chapter.

(2) The notice provided pursuant to this subdivision shall set forth the legal name, address, and telephone number of the contractor, and the name, address, and telephone number of the contractor's representative, if any, and shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

(c) A contractor is not required to list any prevailing wages or apprenticeship standard violations on a prequalification questionnaire that are the direct result of the failure of the owner or developer or its agent, or a hiring party, to notify the contractor that the project, or any portion thereof, was a "public work," as defined in this chapter.

(d) This section does not apply to private residential projects built on private property unless the project is built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(e) This section does not apply if the conduct of the contractor caused the project to be a "public work," as defined in this chapter, or if the contractor has actual knowledge that the work is a "public work," as defined in this chapter.

(f) A contractor may seek recovery pursuant to this section only from a hiring party with whom the contractor has a direct contract.

(g) For purposes of this section, "contractor" means a person or entity licensed by the Contractors' State Licensing Board that has a direct contract with the hiring party to provide services on private property or for the benefit of a private owner or developer.

(h) For purposes of this section, "hiring party" means the party that has a direct contract for services provided by the contractor who is seeking recovery pursuant to subdivision (a) on a private works project that was subsequently determined to be a public work by the Department of Industrial Relations or the Labor and Workforce Development Agency, or by the initiation of any action in a court alleging that the work covered by the project, or any portion thereof, was a public work.

LABOR CODE

SECTION 1810-1815

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

1811. The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

1813. The contractor or subcontractor 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 worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

1814. Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

LABOR CODE

SECTION 1860-1861

1860. The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

1861. Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

LABOR CODE

SECTION 3070-3098

3070. There is in the Division of Apprenticeship Standards the California Apprenticeship Council, which shall be appointed by the Governor, composed of six representatives each from employers or employer organizations and employee organizations, that sponsor apprenticeship programs under this chapter, respectively, geographically selected, and of two representatives of the general public. The Director of Industrial Relations, or his or her permanent and best qualified designee, and the Superintendent of Public Instruction, or his or her permanent and best qualified designee, and the Chancellor of the California Community Colleges, or his or her permanent and best qualified designee, shall also be members of the California Apprenticeship Council. The chairperson shall be elected by vote of the California Apprenticeship Council. Beginning with appointments in 1985, three representatives each of employers and employees, and one public representative shall serve until January 15, 1989. In 1987, three representatives each of the employers and employees, and one public representative shall serve until January 15, 1991. Any member whose term expires on January 15, 1986, shall continue to serve until January 15, 1987. Thereafter each member shall serve for a term of four years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor shall be appointed for the remainder of that term. Each member of the council shall receive the sum of one hundred dollars (\$100) for each day of actual attendance at meetings of the council, for each day of actual attendance at hearings by the council or a committee thereof pursuant to Section 3082, and for each day of actual attendance at meetings of other committees established by the council and approved by the Director of Industrial Relations, together with his or her actual and necessary traveling expenses incurred in connection therewith.

3071. The California Apprenticeship Council shall meet at the call of the Director of Industrial Relations and shall aid him or her in formulating policies for the effective administration of this chapter.

Thereafter, the California Apprenticeship Council shall meet quarterly at a designated date and special meetings may be held at the call of the chairman. The California Apprenticeship Council shall issue rules and regulations which establish standards for minimum wages, maximum hours, and working conditions for apprentice agreements, hereinafter in this chapter referred to as apprenticeship standards, which in no case shall be lower than those prescribed by this chapter; and shall issue rules and regulations governing equal opportunities in apprenticeship, affirmative action programs which include women and minorities in apprenticeship, and other on-the-job training, and criteria for selection procedures with a view particularly toward eliminating criteria not relevant to qualification for training employment or more stringent than is reasonably necessary.

3072. The Director of Industrial Relations is ex officio the Administrator of Apprenticeship and is authorized to appoint assistants as necessary to effectuate the purposes of this chapter.

3073. The Chief of the Division of Apprenticeship Standards, or his or her duly authorized representative, shall administer the provisions of this chapter; act as secretary of the California Apprenticeship Council; shall foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment; shall ensure that selection procedures are impartially administered to all applicants for apprenticeship; shall gather and promptly disseminate information through apprenticeship and training information centers; shall maintain on public file in all high schools and field offices of the Employment Development Department the name and location of the local area apprenticeship

committees, the filing date, and minimum requirements for application of all registered apprenticeship programs; shall cooperate in the development of apprenticeship programs and may advise with them on problems affecting apprenticeship standards; shall audit all selection and disciplinary proceedings of apprentices or prospective apprentices; may enter joint agreements with the Employment Development Department outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers, including positive efforts to achieve information on equal opportunity and affirmative action programs for women and minorities; and shall supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the California Apprenticeship Council may recommend. The chief shall coordinate the exchange, by the California Apprenticeship Council, the apprenticeship program sponsors, the Fair Employment and Housing Council, community organizations, and other interested persons, of information on available minorities and women who may serve as apprentices.

3073.1. (a) The division shall audit apprenticeship programs to ensure that the program audited is complying with its standards, that all on-the-job training is supervised by journeymen, that all related and supplemental instruction required by the apprenticeship standards is being provided, that all work processes in the apprenticeship standards are being covered, and that graduates have completed the apprenticeship program's requirements. The division shall examine each apprenticeship program to determine whether apprentices are graduating from the program on schedule or dropping out and to determine whether graduates of the program have obtained employment as journeymen. During the audit, the division shall attempt to contact a statistically valid sample of apprentices who have dropped out of the program prior to completion to determine the apprentices' reasons for leaving the program. Every apprenticeship program sponsor shall have a duty to cooperate with the division in conducting an audit.

(b) Audit reports shall be presented to the California Apprenticeship Council and shall be made public, except that the division shall not make public information that would infringe on the privacy of individual apprentices. The division shall recommend remedial action to correct deficiencies recognized in the audit report, and the failure to follow division recommendations or to correct deficiencies within a reasonable period of time shall be grounds for withdrawing state approval of a program. Nothing shall prevent the division from conducting more frequent or random audits of apprenticeship programs where deficiencies have been identified.

(c) The division shall give priority in conducting audits to programs that have been identified as having deficiencies. The division may conduct simplified audits for programs with fewer than five registered apprentices.

(d) For new and newly expanded building and construction trades apprenticeship programs, the division shall audit each program one year after approval of the creation or expansion of the program.

(e) If the division finds evidence that information provided to it by a building and construction trades apprenticeship program has been purposefully misstated, the division shall immediately investigate and determine whether an audit of the program is necessary. The division shall report its investigatory findings to the California Apprenticeship Council and make them available to the public, except that the division shall not make public information that would infringe upon the privacy of individual apprentices.

(f) If the division determines that a building and construction trades apprenticeship program has been the subject of two or more meritorious complaints that concern the recruitment, training, or education of apprentices within a five-year period, the division shall schedule the program for an audit within three months of the determination.

(g) If the division determines that a building and construction trades apprenticeship program that has had at least two graduating classes has an annual apprentice completion rate below 50 percent of the average completion rate for the applicable trade, the division shall schedule the program for an audit within three months of the determination.

3073.3. It is the intent of the Legislature that the Department of Industrial Relations will encourage greater participation for women and ethnic minorities in apprenticeship programs.

3073.5. The Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council shall annually report through the Director of Industrial Relations to the Legislature and the public on the activities of the division and the council. The report shall contain information including, but not limited to, analyses of the following:

(a) The number of individuals, including numbers of women and minorities, registered in apprenticeship programs in this state for the current year and in each of the previous five years.

(b) The number and percentage of apprentices, including numbers and percentages of minorities and women, registered in each apprenticeship program having five or more apprentices, and the percentage of those apprentices who have completed their programs successfully in the current year and in each of the previous five years.

(c) Remedial actions taken by the division to assist those apprenticeship programs having difficulty in achieving affirmative action goals or having very low completion rates.

(d) The number of disputed issues with respect to individual apprenticeship agreements submitted to the Administrator of Apprenticeship for determination and the number of those issues resolved by the council on appeal.

(e) The number of apprenticeship program applications received by the division, the number approved, the number denied and the reason for those denials, the number being reviewed, and deficiencies, if any, with respect to those program applications being reviewed.

(f) The number of apprenticeship programs, approved by the Division of Apprenticeship Standards, that are disapproved by the California Apprenticeship Council, and the reasons for those disapprovals.

3074. The preparation of trade analyses and development of curriculum for instruction, and the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for this instruction shall be the responsibility of, and shall be provided by, state and local boards responsible for vocational education upon agreement with the program sponsor. This responsibility shall not preclude the establishment of off-campus related and supplemental instruction when approved, developed, and operated in cooperation with state and local school boards responsible for vocational education, and when the instruction meets all other requirements of this chapter. It is the intent of this chapter that the instruction shall be made available to apprentices through classroom instruction, correspondence courses, self-study or other means of instruction approved by state and local public education agencies authorized to provide vocational education.

Pursuant to this chapter all excess costs incurred by local public education agencies exceeding state apportionments and local revenue earned by the attendance of apprentices shall be payable by the program sponsor, upon joint agreement between the sponsor and the local education agency. The State Board of Education and the Board of Governors of the California Community Colleges, and the Division of Apprenticeship Standards shall jointly issue regulations regarding calculation and payment provisions of excess costs to be borne by the program sponsors. All funds accrued by local education agencies from attendance in apprenticeship classes authorized by this section shall be expended or allocated for all such classes offered by the local education agency before excess costs may be claimed.

The Department of Education and the Board of Governors of the California Community Colleges may provide related and supplemental instruction to isolated apprentices as a direct instructional service, on a contractual basis with local school districts, by correspondence, or by a combination of these means. For the purpose of this section, an isolated apprentice is an apprentice registered with the Division of Apprenticeship Standards in the Department of Industrial Relations who cannot be enrolled in a class of related and supplementary instruction for apprentices because of the small number of apprentices available for an appropriate class or because there is no existing apprenticeship program within a reasonable travel distance.

Interested parties may file a complaint in accordance with Section 201 of Title 8 of the Administrative Code, when a community college or secondary education district is unable to reach agreement with program sponsors in providing related and supplemental instruction. In the process of securing an amicable adjustment, the administrator, or his or her representative, shall meet with the parties involved,

including, but not limited to, the chancellor, or his or her representative, or the Superintendent of Public Instruction, or his or her representative.

Community colleges, and other public school districts, shall refuse to provide related and supplemental instruction to an apprenticeship program when it is determined by the Administrator of Apprenticeship that the program sponsor has been found to be in noncompliance with the State of California Plan for Equal Opportunity in Apprenticeship.

3074.1. In compliance with the affirmative action requirements of California's plan for equal opportunity in apprenticeship, school districts maintaining high schools, community colleges districts, and apprenticeship program sponsors, shall provide students with information as to the availability of apprenticeship programs.

3074.3. In providing related and supplemental instruction pursuant to Section 3074, and notwithstanding any provisions of the Education Code, the Superintendent of Public Instruction and the Chancellor of the California Community Colleges shall recognize registration in an apprenticeship program approved by the Division of Apprenticeship Standards in the Department of Industrial Relations as an acceptable prerequisite to enrollment into such related and supplemental classes.

3074.7. Notwithstanding any other provision of law, the governing board of a school district which offers classroom instruction in postgraduate and upgrading courses pursuant to subdivision (d) of Section 3093 of this code may impose a fee upon individuals receiving instruction in such postgraduate and upgrading courses. Such fee shall be not more than the amount necessary, as determined by the governing board, to cover the total cost of all such classroom instruction given the individuals.

3075. (a) An apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer. Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing. Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

(b) For purposes of this section, the apprentice training needs in the building and construction trades shall be deemed to justify the approval of a new apprenticeship program only if any of the following conditions are met:

(1) There is no existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area.

(2) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers at a public works site who are willing to abide by the applicable apprenticeship standards.

(3) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the California Apprenticeship Council as deficient in meeting their obligations under this chapter.

(c) Notwithstanding subdivision (b), the California Apprenticeship Council may approve a new apprenticeship program if special circumstances, as established by regulation, justify the establishment of the program.

3075.1. It is the public policy of this state to encourage the utilization of apprenticeship as a form of on-the-job training, when such training is cost-effective in developing skills needed to perform public services. State and local public agencies shall make a diligent effort to establish apprenticeship programs for apprenticeable occupations in their respective work forces. In furtherance of this policy, public agencies shall take into

consideration (a) the extent to which a continuous supply of trained personnel is readily available to public agencies to meet their skill requirements in the various occupations which are determined to be apprenticeable, and (b) the application of established programs in the private sector, where appropriate. Public sector apprenticeship programs should be fully compatible with affirmative action goals for the participation of minorities and women in apprenticeship programs.

3075.5. (a) This section applies when a building and construction trades industry program applies to the Chief of the Division of Apprenticeship Standards for approval of a new apprenticeship program or for the expansion of an existing apprenticeship program into a new occupation or geographic area. The requirements of this section are in addition to other requirements that may be imposed by statute or regulation.

(b) (1) An applicant for a new or expanded apprenticeship program under subdivision (a) shall submit to the chief a written plan that sets out the number of new apprentices the applicant seeks to enroll during the next five years in the new or expanded program, new occupation, or new geographic area. The plan must include the applicant's budget for training the new apprentices and a detailed explanation of how the applicant intends to provide sufficient funding to meet that budget.

(2) The applicant shall submit to the chief a written plan providing a reasonable timetable to obtain sufficient commitments from employers to employ the new apprentices so as to ensure, to the extent feasible, consistent with the rates of employment for existing programs in good standing in the applicable trade, that the new apprentices will be employed continuously throughout the entire term of apprenticeship.

(3) The applicant shall submit to the chief verifiable evidence that the applicant has obtained, or will obtain, suitable and adequate facilities to train the new apprentices. The chief, or his or her representative, shall personally inspect the facilities within six months after the final approval of the program.

(4) The applicant shall submit to the chief a plan for the recruitment and selection of the new apprentices. The plan shall include advertising of the new apprenticeship opportunities within the geographic area and outreach to organizations that promote apprenticeship opportunities to women and underrepresented minorities.

(c) The chief shall not approve an application that fails to meet any of the requirements of this section. If the chief does not approve an application because of its failure to comply with this section, the chief shall within 90 days provide the applicant with a detailed explanation of the deficiencies in the application and recommendations for addressing those deficiencies to obtain program approval. The applicant may submit a new or amended application to the chief within 90 days of receipt of the chief's recommendations. The chief shall provide a detailed response to a new or amended application within 90 days of its receipt.

3075.6. Each building and construction trades apprenticeship program shall provide to each apprentice, on at least a semiannual basis, a statement showing the number of hours of on-the-job training and related and supplemental instruction that the apprentice has acquired toward graduation, the total number of hours of on-the-job training and related and supplemental instruction that are necessary for graduation, and the apprentice's expected graduation date.

3075.7. Every building and construction trades industry apprenticeship program shall submit apprentice registration, change of address, graduation, and termination data to the Division of Apprenticeship Standards on a monthly basis in an electronic format acceptable to the division.

3076. The function of a joint apprenticeship committee, when specific written authority is delegated by the parent organizations represented, shall be to establish work processes, wage rates, working conditions for apprentices, the number of apprentices which shall be employed in the trade under apprentice agreements, and aid in the adjustment of apprenticeship disputes in accordance with standards for apprenticeship set up by the California Apprenticeship

Council. Disciplinary proceedings resulting from disputes shall be duly noticed to the involved individuals.

3076.3. Program sponsors shall establish selection procedures which specify minimum requirements for formal education or equivalency, physical examination, if any, subject matter of written tests and oral interviews, and any other criteria pertinent to the selection process; shall specify the relative weights of all factors which determine selection to an apprenticeship program; shall submit in writing to the chief an official statement of each selection procedure including the filing date and location of the program sponsor; shall make a copy of the selection procedures available to each applicant; shall provide in writing to each applicant not selected an official explanation setting forth the reason or reasons for the nonselection, copies of which shall be retained as a public record in the files of the program sponsor for a period of five years; and shall implement affirmative action programs for minorities and women in accordance with the rules, regulations, and guidelines of the California Apprenticeship Council.

3076.5. A program sponsor may provide in its selection procedures for an additional 10 points credit in the selection of veteran applicants for apprenticeship.

"Veteran," as used in this section, means a veteran who has served in the armed forces of this country for at least 181 consecutive days since January 31, 1955, and who has been discharged or released under conditions other than dishonorable, but does not include any person who served only in auxiliary or reserve components of the armed forces whose services therein did not exempt him or her from the operation of the Selective Training and Service Act of 1940 (54 Stat. 885).

3077. The term "apprentice" as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an "apprentice agreement," with an employer or program sponsor. The term of apprenticeship for each apprenticeable occupation shall be approved by the chief, and in no case shall provide for less than 2,000 hours of reasonably continuous employment for such person and for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

3077.5. A program sponsor administering an apprenticeship program under this chapter shall not provide a maximum age for apprentices.

3078. Every apprentice agreement entered into under this chapter shall directly, or by reference, contain:

- (a) The names of the contracting parties.
- (b) The date of birth of the apprentice.
- (c) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.
- (d) A statement showing the number of hours to be spent by the apprentice in work and the learning objectives to be accomplished through related and supplemental instruction, except as otherwise provided under Section 3074. These exceptions shall be subject to the appeal procedures established in Sections 3081, 3082, 3083, and 3084. A minimum of 144 hours of related and supplemental instruction for each year of apprenticeship is recommended; however, related instruction may be expressed in terms of units or other objectives to be accomplished. In no case shall the combined weekly hours of work and required related and supplemental instruction of the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age of the apprentice.
- (e) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process.
- (f) A statement of the graduated scale of wages to be paid the apprentice and whether the required schooltime shall be compensated.
- (g) A statement providing for a period of probation of not more than 1,000 hours of employment and not more than 72 hours of related instruction, during which time the apprentice agreement may be

terminated by the program sponsor at the request in writing of either party, and providing that after the probationary period the apprentice agreement may be terminated by the administrator by mutual agreement of all parties thereto, or canceled by the administrator for good and sufficient reason.

(h) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally, or which are not covered by collective-bargaining agreement, shall be submitted to the administrator for determination as provided for in Section 3081.

(i) A provision that an employer who is unable to fulfill his or her obligation under the apprentice agreement may, with approval of the administrator, transfer the contract to any other employer if the apprentice consents and the other employer agrees to assume the obligation of the apprentice agreement.

(j) Such additional terms and conditions as may be prescribed or approved by the California Apprenticeship Council, not inconsistent with the provisions of this chapter.

(k) A clause providing that there shall be no liability on the part of the other contracting party for an injury sustained by an apprentice engaged in schoolwork at a time when the employment of the apprentice has been temporarily or permanently terminated.

3079. Every apprentice agreement under this chapter shall be approved by the local joint apprenticeship committee or the parties to a collective bargaining agreement or, subject to review by the council, by the administrator where there is no collective bargaining agreement or joint committee, a copy of which shall be filed with the California Apprenticeship Council. Every apprentice agreement shall be signed by the employer, or his or her agent, or by a program sponsor, as provided in Section 3080, and by the apprentice, and if the apprentice is a minor, by the minor's parent or guardian. Where a minor enters into an apprentice agreement under this chapter for a period of training extending into his or her majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

3080. (a) For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the California Apprenticeship Council be signed by an association of employers or an organization of employees instead of by an individual employer. In that case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for an apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of the apprentice's employment. The apprentice agreement shall also expressly provide for the transfer of the apprentice, subject to the approval of the California Apprenticeship Council, to an employer or employers who shall sign a written agreement with the apprentice, and if the apprentice is a minor, with the apprentice's parent or guardian, as specified in Section 3079, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the apprentice agreement.

(b) All apprenticeship programs with more than one employer or an association of employers shall include provisions sufficient to ensure meaningful representation of the interests of apprentices in the management of the program.

3081. Upon the complaint of any interested person or upon his own initiative, the administrator may investigate to determine if there has been a violation of the terms of an apprentice agreement, made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigations and determinations. The parties to such agreement shall be given a fair and impartial hearing, after reasonable notice thereof. All such hearings, investigations and determinations shall be made under authority of reasonable rules and procedures prescribed by the California Apprenticeship Council.

3082. The determination of the administrator shall be filed with the California Apprenticeship Council. If no appeal therefrom is filed with the California Apprenticeship Council within 10 days from the date the parties are given notification of the determination, in accordance with Section 1013a and Section 2015.5 of the Code of Civil Procedure, the determination shall become the order of the California Apprenticeship Council. Any person aggrieved by the determination or action of the administrator may appeal therefrom to the California Apprenticeship Council, which shall review the entire record and may hold a hearing thereon after due notice to the interested parties.

3083. The decision of the California Apprenticeship Council as to the facts shall be conclusive if supported by the evidence and all orders and decisions of the California Apprenticeship Council shall be prima facie lawful and reasonable.

3084. Any party to an apprentice agreement aggrieved by an order or decision of the California Apprenticeship Council may maintain appropriate proceedings in the courts on questions of law. The decision of the California Apprenticeship Council shall be conclusive if the proceeding is not filed within 30 days after the date the aggrieved party is given notification of the decision.

3084.5. In any case in which a person or persons have willfully violated any of the laws, regulations, or orders governing applicants for apprenticeship or apprentices registered under this chapter, the Division of Apprenticeship Standards may obtain in a court of competent jurisdiction, an injunction against any further violations of any such laws, regulations, or orders by such person or persons.

3085. No person shall institute any action for the enforcement of any apprentice agreement, or damages for the breach of any apprentice agreement, made under this chapter, unless he shall first have exhausted all administrative remedies provided by this chapter.

3086. Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees setting up higher apprenticeship standards.

3088. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons and circumstances, shall not be affected thereby.

3089. This chapter shall be known and may be cited as the Shelley-Maloney Apprentice Labor Standards Act of 1939.

3090. The Division of Apprenticeship Standards shall investigate, approve or reject applications from establishments for apprenticeship and other on-the-job training, and for that purpose, may cooperate, or contract with, and receive reimbursements from the appropriate agencies of the Federal Government.

3091. Acceptance of an application for entrance into an apprenticeship training program shall not be predicated on the payment of any fee. Reasonable costs for expense incurred may be

charged after an applicant has been accepted into the program.

3091.5. Pursuant to Section 16370 of the Government Code, there is hereby authorized in the State Treasury a Special Deposit Fund Account, which shall consist of moneys collected from the sale of instructional material to persons enrolled in any apprenticeship training program under this chapter. All of the moneys collected are hereby appropriated without regard to fiscal year for the support of the Department of Education to be used for the development and production of apprenticeship instructional material.

3092. A successful graduate of a training program in a particular apprenticeable occupation of a vocational education program meeting the standards of the California State Plan for Vocational Education may receive credit toward a term of apprenticeship if the program is jointly established and approved by a school district, a county superintendent of schools, a public entity conducting a regional occupational center or program, or a private postsecondary vocational school accredited by a regional or national accrediting agency recognized by the United States Office of Education and the program sponsor of the particular apprenticeable occupation.

3093. (a) This section applies only when voluntarily requested by the parties to a collective bargaining agreement or by an employer, his or her association, or a union, or its representative where there is no collective bargaining agreement.

(b) Nothing in this section may be construed in any way so as to compel, regulate, interfere with, or duplicate the provisions of any established training programs which are operated under the terms of any collective bargaining agreements or unilaterally by any employer or bona fide labor union.

(c) Services contemplated under this section may be provided only when voluntarily requested and shall be denied when it is found that existing prevailing conditions in the area and industry would in any way be lowered or adversely affected.

(d) The California Apprenticeship Council in cooperation with the Department of Education, the Employment Development Department, and the Board of Governors of the California Community Colleges may foster and promote on-the-job training programs other than apprenticeship as follows: (1) programs for journeymen in the apprenticeable occupations to keep them abreast of current techniques, methods, and materials and opportunities for advancement in their industries; (2) programs in other than apprenticeable occupations for workers entering the labor market for the first time or workers entering new occupations by reason of having been displaced from former occupations by reason of economic, industrial, technological scientific changes, or developments; (3) the programs shall be in accord with and agreed to by the parties to any applicable collective bargaining agreements and where appropriate will include joint employer-employee cooperation in the programs.

(e) The Division of Apprenticeship Standards when requested may foster and promote voluntary on-the-job training programs in accordance with this section, and assist employers, employees and other interested persons and agencies in the development and carrying out of the programs. The Division of Apprenticeship Standards shall cooperate in these functions with the Department of Education, the Employment Development Department, and the Board of Governors of the California Community Colleges and other governmental agencies. The Division of Apprenticeship Standards may cooperate with the Department of Corrections and the Department of the Youth Authority in the development of training programs for inmates and releaseses of correctional institutions.

(f) The programs, where appropriate, may include related and supplemental classroom instruction offered and administered by state and local boards responsible for vocational education.

(g) The activities and services of the Division of Apprenticeship Standards in training programs under this section shall be performed without curtailing or in any way interfering with the division's activities and services in apprenticeship.

(h) The Division of Apprenticeship Standards may contract with, and receive reimbursements from, appropriate federal, state, and other governmental agencies.

(i) The vocational education activities and services of the Department of Education, the Board of Governors of the California

Community Colleges, and local public school districts shall not be abridged or abrogated through implementation of this section.

(j) "On-the-job training" as used in this section refers exclusively to training confined to the needs of a specific occupation and conducted at the jobsite for employed workers.

(k) "Journeyman," as used in this section, means a person who has either (1) completed an accredited apprenticeship in his craft, or (2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the apprenticeship standards for the craft which has workers classified as journeymen in an apprenticeable occupation.

(l) Nothing in this section shall be construed to require prior approval, ratification, or reference of any training program to the Division of Apprenticeship Standards or the Department of Industrial Relations.

3095. Every person who willfully discriminates in any recruitment or apprenticeship program 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, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or both.

3097. The Department of Industrial Relations, Division of Apprenticeship Standards, may cooperate in the provision of, or provide, services to the Employment Development Department, and to service delivery areas, as designated pursuant to the Job Training Partnership Act (P.L. 97-300, and Division 8 commencing with Section 15000 of the Unemployment Insurance Code). The Department of Industrial Relations, Division of Apprenticeship Standards may enter into any agreements as may be necessary for this purpose.

The Division of Apprenticeship Standards shall exert maximum effort to persuade sponsors of its registered, nonfederally funded, voluntary apprenticeship and on-the-job training programs to accept to the maximum possible extent the eligible persons as described in the Job Training Partnership Act (P.L. 97-300) and Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

3098. An apprentice registered in an approved apprenticeship program in any of the building and construction trades shall be employed only as an apprentice when performing any construction work for an employer that is a party, individually or through an employer association, to any apprenticeship agreement or standards covering that individual.

PUBLIC CONTRACT CODE

SECTION 4100-4114

4100. This chapter may be cited as the "Subletting and Subcontracting Fair Practices Act."

4101. The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

4103. Nothing in this chapter limits or diminishes any rights or remedies, either legal or equitable, which:

(a) An original or substituted subcontractor may have against the prime contractor, his or her successors or assigns.

(b) The state or any county, city, body politic, or public agency may have against the prime contractor, his or her successors or assigns, including the right to take over and complete the contract.

4104. Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) (1) The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

(2) An inadvertent error in listing the California contractor license number provided pursuant to paragraph (1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the public entity by the prime contractor within 24 hours after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

(3) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name, location of business, and California contractor license number, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.

(B) A state or local agency may implement subparagraph (A) at its option.

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

(c) This section shall become operative on July 1, 2014.

4104.5. (a) The officer, department, board, or commission taking bids for construction of any public work or improvement shall specify in the bid invitation and public notice the place the bids of the prime contractors are to be received and the time by which they shall be received. The date and time shall be extended by no less than 72 hours if the officer, department, board, or commission issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing. Any bids received after the time specified in the notice or any extension due to material changes shall be returned unopened.

(b) As used in this section, the term "material change" means a change with a substantial cost impact on the total bid as determined by the awarding agency.

(c) As used in this section, the term "bid invitation" shall include any documents issued to prime contractors that contain descriptions of the work to be bid or the content, form, or manner of submission of bids by bidders.

4105. Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

4106. If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.

If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

4107. A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

4107.2. No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

4107.5. The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party

in possession of facts which may have a bearing on the decision of the awarding authority.

4107.7. If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code.

4108. (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.

(2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.

(3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

4109. Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

4110. A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

4111. Violation of this chapter by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors State License Board, in addition to the penalties prescribed in Section 4110.

4112. The failure on the part of a contractor to comply with any provision of this chapter does not constitute a defense to the contractor in any action brought against the contractor by a subcontractor.

4113. As used in this chapter, the word "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, who contracts directly with the prime contractor.

"Prime contractor" shall mean the contractor who contracts directly with the awarding authority.

4114. The county board of supervisors, when it is the awarding authority, may delegate its functions under Sections 4107 and 4110 to any officer designated by the board.

The authorized officer shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice or hearing, or may set the matter for a de novo hearing before the board.

SUBCHAPTER B—EMPLOYMENT AND BUSINESS OPPORTUNITY

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

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APPENDIX TO PART 135

AUTHORITY: 12 U.S.C. 1701u; 42 U.S.C. 5335(d).

SOURCE: 59 FR 33880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Hous-

ing and Community Development Act of 1992 is published and becomes effective.

Subpart A—General Provisions

§ 135.1 Purpose.

(a) *Section 3.* The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.

(a) *Section 3 covered assistance.* Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) *Public and Indian housing assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

(i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and

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(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) *Housing and community development assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; and

(iii) Other public construction.

(3) *Thresholds*—(i) *No thresholds for section 3 covered public and Indian housing assistance.* The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contract or subcontract.

(ii) *Thresholds for section 3 covered housing and community development assistance*—(A) *Recipient thresholds.* The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.

(B) *Contractor and subcontractor thresholds.* The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

(C) *Threshold met for recipients, but not contractors or subcontractors.* If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

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(b) *Applicability of section 3 to entire project or activity funded with section 3 assistance.* The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) *Applicability to Indian housing authorities and Indian tribes.* Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Other HUD assistance and other Federal assistance.* Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms *Department*, *HUD*, *Indian housing authority (IHA)*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the

ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of “section 3 business concern” in this section.

Contract. See the definition of “section 3 covered contract” in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in §135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with section 3 covered projects (as described in §135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services

required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD’s public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of “section 3 resident” in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

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(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for “section 3 covered projects,” as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section—

(1) That is 51 percent or more owned by section 3 residents; or

(2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the busi-

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ness concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 clause means the contract provisions set forth in § 135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means: (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;

(2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;

(3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;

(4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; or

(iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. “Section 3 covered contracts” do not include contracts awarded under HUD’s procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the

purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See § 135.40. Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) *A low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) *A very low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by

section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of "section 3 resident" in this section.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section.

[59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however*, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

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§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part 135.* All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.* (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed \$200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) *Section 3 as NOFA evaluation criteria.* Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, con-

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sideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) *Procurement standards for States and local governments (24 CFR 85.36)*—(1) *General.* Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) *Flexible Subsidy Program.* Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) *Procurement standards for other recipients (OMB Circular No. A-110).* Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a

Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(c) *Federal labor standards provisions.* Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in “approved apprenticeship and training programs,” as described in paragraph (d) of this section.

(d) *Approved apprenticeship and trainee programs.* Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(e) *Compliance with Executive Order 11246.* Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be

discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) *General.* (1) Recipients and covered contractors may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) *Training and employment.* The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) *Numerical goals for section 3 covered public and Indian housing programs.* Recipients of section 3 covered public and Indian housing assistance (as described in §135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

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(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) *Numerical goals for other HUD programs covered by section 3.* (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and

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(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.* (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in §135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§ 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the

operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in §135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in §135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in §135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contrac-

tors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority;

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(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) *Eligibility for preference.* A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in §135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) *Eligibility for employment.* Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or whose full-time,

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permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) *Eligibility for preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in §135.5.

(c) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to

perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

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

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause,

upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

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

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

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

§ 135.40 Providing other economic opportunities.

(a) *General.* In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) *Other training and employment related opportunities.* Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in

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management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) *Other business related economic opportunities.* (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A *section 3 joint venture* means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging non-compliance with the regulations of this

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part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in § 135.76(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in § 135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of non-compliance made under § 135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 2424 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any

period of debarment, suspension, or otherwise ineligible status.

[59 FR 33880, June 30, 1994, as amended at 72 FR 73493, Dec. 27, 2007]

§ 135.74 Section 3 compliance review procedures.

(a) *Compliance reviews by Assistant Secretary.* The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) *Form of compliance review.* A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) *Where compliance review reveals noncompliance with section 3 by recipient or contractor.* Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract be-

tween the recipient and the contractor. Where appropriate, debarment, suspension, and limited denial of participation may be applied to the recipient or the contractor, pursuant to HUD's regulations at 2 CFR part 2424.

(e) *Conducting compliance review before the award of assistance.* Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) *Consideration of complaints during compliance review.* Complaints alleging noncompliance with section 3, as provided in § 135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

[59 FR 33880, June 30, 1994, as amended at 72 FR 73493, Dec. 27, 2007]

§ 135.76 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) *Where to file a complaint.* A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

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(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges non-compliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) *Contents of complaint*—(1) *Written complaints.* Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) *Amendment of complaint.* Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

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(e) *Resolution of complaint by recipient.* (1) Within ten (10) days of timely filing of a complaint that contains complete information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) *Informal resolution of complaint by Assistant Secretary*—(1) *Dismissal of complaint.* Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid

allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) *Informal resolution.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) *Effective date of informal resolution.* The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) *Sanctions.* Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) *Investigation of complaint.* The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business

has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) *Judicial relief.* Nothing in this subpart D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529-0043)

Subpart E—Reporting and Recordkeeping

§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section 3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are

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maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

APPENDIX TO PART 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into "first source" hiring agreements with organizations representing Section 3 residents.

(2) Sponsoring a HUD-certified "Step-Up" employment and training program for section 3 residents.

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

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(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents

previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such

information being made available in languages other than English where appropriate.

(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of

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the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest respon-

sive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than \$100,000	10% of that bid or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000.
\$7 million or more	1½% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* (i) For contracts and sub-

contracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

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146.3 Purpose of HUD's age discrimination regulation.

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146.47 Remedial and affirmative action by recipients.

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AUTHORITY: 42 U.S.C. 3535(d) and 6103.

SOURCE: 51 FR 45266, Dec. 17, 1986, unless otherwise noted.

Subpart A—General

§ 146.1 Purpose of the Age Discrimination Act of 1975.

The Age Discrimination Act of 1975 (the Act) prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act, however, permits federally assisted programs and activities and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this part.

§ 146.3 Purpose of HUD's age discrimination regulation.

The purpose of this part is to state HUD's policies and procedures under the Age Discrimination Act of 1975, consistent with the government-wide age discrimination regulation contained at 45 CFR part 90.

§ 146.5 Applicability of part.

This part applies to each program or activity that receives Federal financial assistance provided by HUD.

§ 146.7 Definitions.

The terms *HUD* and *Secretary* are defined in 24 CFR part 5.

Act means the Age Discrimination Act of 1975, 42 U.S.C. 6101-07.

Action means any act, activity, policy, rule, standard, or method of administration or the use of any policy,

SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

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Article 1: Labor Standards

A. Applicability. The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation. The terms of this Supplementary Conditions to the Construction Contract (HUD-92554M) takes precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with said Supplementary Conditions.

B. Minimum Wages. Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (“**Administrator**”). The Administrator, or an authorized representative, shall approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its

designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls, records, and certifications.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct

classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii))), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired, whether paper (Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site), or electronically pursuant to Program Obligations. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or Owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee.

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or

supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph B.3.(ii)(b) of this Article.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Sections 3801 et seq of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices shall be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the

program, but who has been certified by the Office of Apprenticeship, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on

the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

6. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all Contract clauses referenced in this subparagraph.

7. Contract termination and debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both."

C. Contract Work Hours and Safety Standards Act.

1. Applicability and Definitions. This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than \$100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

3. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. Withholding for unpaid wages and liquidated damages. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work

Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

5. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

D. Certification.

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

Article 2: Equal Employment Opportunity

A. **Applicability.** This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

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

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

D. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a

notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very-low income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the Project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than \$100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

LOCALITY: SAN DIEGO COUNTY

DETERMINATION: SDI-2019-2

CRAFT (JOURNEY LEVEL)	ISSUE DATE	EXPIRATION DATE	BASIC HOURLY RATE	HEALTH AND WELFARE	EMPLOYER PAYMENTS				STRAIGHT-TIME		OVERTIME HOURLY RATE			SUNDAY AND HOLIDAY
					PENSION	VACATION / HOLIDAY	TRAINING	OTHER	HOURS	TOTAL HOURLY RATE	DAILY	SATURDAY		
# BRICKLAYER:														
MASON FINISHER	02/22/2019	10/31/2019**	A 38.210	8.250	8.230	-	B 0.960	0.100	C 8.0	55.750	D 74.850	D 74.850		93.960
# BRICK TENDER	02/22/2019	10/31/2019**	A 29.250	8.250	8.230	-	B 0.870	0.100	C 8.0	46.700	D 61.330	D 61.330		75.950
# CARPET LAYER:														
RESILIENT TILE LAYER	02/22/2019	10/31/2019**	31.000	7.320	7.000	E 4.490	0.570	0.310	8.0	50.690	F 66.190	G 66.190		81.690
MATERIAL HANDLER - FIRST SIX MONTHS J	02/22/2019	12/31/2019*	12.000	-	-	0.500	-	-	8.0	12.500	H 18.500	I 18.500		24.500
MATERIAL HANDLER - AFTER SIX MONTHS J	02/22/2019	12/31/2019*	12.000	4.100	0.150	0.500	0.100	-	8.0	16.850	H 22.850	I 22.850		28.850
# DRYWALL FINISHER	02/22/2019	03/31/2019*	& 15.000	7.050	3.000	3.070	0.670	-	8.0	28.790	K 36.290	K 36.290	K	36.290
# ELECTRICIAN:														
INSIDE WIREMAN, TECHNICIAN	08/22/2019	05/31/2020*	45.000	7.160	L 6.850	-	0.870	0.240	8.0	61.470	M 84.650	M 84.650		107.820
CABLE SPLICER	08/22/2019	05/31/2020*	45.750	7.160	L 6.850	-	0.870	0.240	8.0	62.240	M 85.810	M 85.810		109.370
TUNNEL WIREMAN	08/22/2019	05/31/2020*	50.630	7.160	L 6.850	-	0.870	0.240	8.0	67.270	M 93.350	M 93.350		119.420
TUNNEL CABLE SPLICER	08/22/2019	05/31/2020*	51.380	7.160	L 6.850	-	0.870	0.240	8.0	68.040	M 94.500	M 94.500		120.960
SOUND AND SIGNAL TECHNICIAN	08/22/2019	05/31/2020**	32.950	7.160	L 4.090	-	0.780	0.140	8.0	46.110	H 63.080	N 63.080		80.050
STREETLIGHTING, TRAFFIC SIGNAL, UNDERGROUND SYSTEMS JOURNEYMAN														
TECHNICIAN GRADE 1 0	02/22/2019	10/06/2019**	32.440	5.950	L 1.500	-	0.250	0.170	8.0	41.280	P 57.990	P 57.990		74.700
TECH GRADE 2 0	02/22/2019	10/06/2019**	27.050	5.950	L 1.500	-	0.250	0.170	8.0	35.730	P 49.660	P 49.660		63.600
TECH GRADE 3 0	02/22/2019	10/06/2019**	24.450	5.950	L 1.500	-	0.250	0.170	8.0	33.050	P 45.650	P 45.650		58.240
TECH GRADE 4 0	02/22/2019	10/06/2019**	17.650	5.950	L -	-	0.250	0.170	8.0	24.550	P 33.640	P 33.640		42.730
TECH GRADE 5 0	02/22/2019	10/06/2019**	14.850	5.950	L -	-	0.250	0.170	8.0	21.670	P 29.310	P 29.310		36.960
# FIELD SURVEYOR:														
CHIEF OF PARTY (018.167-010) Q	02/22/2019	09/30/2019*	50.160	11.450	10.650	E 4.620	1.100	0.150	8.0	78.130	R 103.210	R 103.210		128.290
INSTRUMENTMAN (018.167-034) Q	02/22/2019	09/30/2019*	47.660	11.450	10.650	E 4.450	1.100	0.150	8.0	75.460	R 99.290	R 99.290		123.120
CHAINMAN/RODMAN (869.567-010) Q	02/22/2019	09/30/2019*	47.080	11.450	10.650	E 4.400	1.100	0.150	8.0	74.830	R 98.370	R 98.370		121.910
# GLAZIER	02/22/2019	09/30/2019**	S 44.950	6.030	11.660	T -	0.630	0.350	U 8.0	63.620	V 86.100	V 86.100		108.570
# MARBLE FINISHER	08/22/2019	05/31/2020*	W 33.430	9.250	3.950	-	0.910	0.370	8.0	47.910	F 64.630	X 64.630	Y	81.340
# PAINTER:														
PAINTER, LEAD ABATEMENT Z	08/22/2019	06/30/2020**	A 32.120	8.900	4.040	2.550	0.600	1.010	8.0	49.220	AA 65.280	AA 65.280	AA	65.280
INDUSTRIAL PAINTER Z	08/22/2019	06/30/2020**	A 34.020	8.900	4.040	2.850	0.700	1.010	8.0	51.520	AA 68.530	AA 68.530	AA	68.530
# PLASTERER	08/22/2019	08/04/2020**	37.860	9.380	5.840	AB 5.870	0.810	1.040	AC 8.0	60.800	AA 79.730	AD 79.730		98.660
# PLASTER TENDER AE	08/22/2019	08/04/2020**	37.370	7.470	8.300	AF 5.180	1.020	0.960	8.0	60.300	AG 78.990	AH 78.990		97.670
PLASTER CLEAN-UP LABORER	08/22/2019	08/04/2020**	34.820	7.470	8.300	AF 5.180	1.020	0.960	8.0	57.750	AG 75.160	AH 75.160		92.570
# PLUMBER:														
PLUMBER, INDUSTRIAL AND GENERAL PIPEFITTER	08/22/2019	08/31/2020**	AI 51.380	9.160	AJ 12.250	AK -	2.250	AL 1.270	8.0	76.310	AM 101.130	AM 101.130		124.320
SEWER AND STORM DRAIN														

PIPELAYER	08/22/2019	08/31/2020**	AI	38.490	9.050	AJ	9.400	AK	-	1.980	AL	1.270	8.0	60.190	78.560	AN	78.560	96.320		
SEWER AND STORM DRAIN PIPE TRADESMAN AO SERVICE & REPAIR	08/22/2019	08/31/2020**	AP	19.040	8.800		0.380		-	1.110	AL	1.120	8.0	30.450	39.100	AN	39.100	47.740		
(PLUMBER/HVAC-FITTER) LANDSCAPE/IRRIGATION FITTER	08/22/2019	08/31/2020**	AI	49.830	9.160	AJ	11.940	AK	-	1.580	AL	1.270	8.0	73.780	97.820	AQ	97.820	AR 120.240		
LANDSCAPE/IRRIGATION TRADESMAN AS FIRE SPRINKLER FITTER (PROTECTION AND CONTROL SYSTEMS, OVERHEAD AND UNDERGROUND)	08/22/2019	08/31/2020**	W	34.400	9.160	AJ	12.250	AK	-	1.640	AL	1.070	AN	8.0	58.520	75.720	75.720	91.570		
	08/22/2019	08/31/2020**	W	14.940	3.000	AJ	1.130		-	0.100	AL	0.870	AN	8.0	20.040	27.510	27.510	34.980		
# ROOFER	02/22/2019	03/31/2019*		40.570	10.020	AT	11.290		-	0.520		0.250	8.0	62.650	82.930	82.930		103.220		
PITCH WORK	08/22/2019	06/30/2020**	AU	34.250	6.920		1.820		-	0.300		0.060	8.0	43.350	59.600	AV	59.600	Y 75.860		
# SHEET METAL WORKER (HVAC) SHEET METAL TECHNICIAN BA UTILITY WORKER BB	08/22/2019	06/30/2020*	A	38.940	9.810	AX	17.730		-	AY	0.930	AZ	0.590	AN	8.0	68.000	AM	87.470	AM 87.470	106.940
# TERRAZZO FINISHER	08/22/2019	06/30/2020*	A	29.250	6.700	AX	1.250		-	AY	0.930	AZ	0.540	AN	8.0	38.670	AM	53.290	AM 53.290	67.920
# TERRAZZO WORKER	08/22/2018	08/31/2019*	S	31.250	8.970		3.790	BD	-	AY	0.550	AZ	0.540	AN	8.0	22.990	AM	30.790	AM 30.790	38.590
# TILE FINISHER	08/22/2018	08/31/2019*	S	38.390	9.250		3.970	BD	-		0.650		0.260	AN	8.0	44.920	F	60.540	BE 60.540	Y 76.170
# TILE LAYER	08/22/2019	05/31/2020*	W	28.230	9.250		2.560		-		0.960		0.260	AN	8.0	52.830	F	72.030	BE 72.030	Y 91.220
	08/22/2019	05/31/2020*	W	40.070	9.250		8.090		-		0.840		0.310	8.0	41.190	F	55.310	X 55.310	Y 69.420	
	08/22/2019	05/31/2020*	W	40.070	9.250		8.090		-		1.020		0.370	8.0	58.800	F	78.830	X 78.830	Y 98.870	

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

* EFFECTIVE UNTIL SUPERSEDED BY A NEW DETERMINATION ISSUED BY THE DIRECTOR OF INDUSTRIAL RELATIONS. CONTACT THE OFFICE OF THE DIRECTOR - RESEARCH UNIT AT (415) 703-4774 FOR THE NEW RATES AFTER TEN DAYS AFTER THE EXPIRATION DATE IF NO SUBSEQUENT DETERMINATION IS ISSUED.

** THE RATE TO BE PAID FOR WORK PERFORMED AFTER THIS DATE HAS BEEN DETERMINED. IF WORK WILL EXTEND PAST THIS DATE, THE NEW RATE MUST BE PAID AND SHOULD BE INCORPORATED IN CONTRACTS ENTERED INTO NOW. CONTACT THE OFFICE OF THE DIRECTOR - RESEARCH UNIT FOR SPECIFIC RATES AT (415) 703-4774.

INDICATES AN APPRENTICEABLE CRAFT. THE CURRENT APPRENTICE WAGE RATES ARE AVAILABLE ON THE INTERNET @ [HTTP://WWW.DIR.CA.GOV/OPRL/PWAPPWAGE/PWAPPWAGESTART.ASP](http://www.dir.ca.gov/OPRL/PWAPPWAGE/PWAPPWAGESTART.ASP). TO OBTAIN ANY APPRENTICE WAGE RATES AS OF JULY 1, 2008 AND PRIOR TO SEPTEMBER 27, 2012, PLEASE CONTACT THE DIVISION OF APPRENTICESHIP STANDARDS OR REFER TO THE DIVISION OF APPRENTICESHIP STANDARDS' WEBSITE AT [HTTP://WWW.DIR.CA.GOV/DAS/DAS.HTML](http://www.dir.ca.gov/DAS/DAS.HTML).

& THE BASIC HOURLY RATE AND EMPLOYER PAYMENTS ARE NOT TAKEN FROM A COLLECTIVE BARGAINING AGREEMENT FOR THIS CRAFT OR CLASSIFICATION.

- A INCLUDES AMOUNT WITHHELD FOR WORKING DUES.
- B INCLUDES AN AMOUNT FOR INTERNATIONAL MASONRY INSTITUTE PROMOTION FUND
- C SATURDAYS IN THE SAME WORK WEEK MAY BE WORKED AT STRAIGHT-TIME IF JOB IS SHUT DOWN DURING THE NORMAL WORKWEEK DUE TO INCLEMENT WEATHER, OR REASONS BEYOND THE CONTROL OF THE EMPLOYER.
- D RATE APPLIES TO THE FIRST 2 DAILY AND THE FIRST 8 SATURDAY OVERTIME HOURS WORKED. ALL OTHER OVERTIME IS PAID AT THE SUNDAY RATE.
- E INCLUDES AN AMOUNT PER HOUR WORKED FOR SUPPLEMENTAL DUES.
- F RATE APPLIES TO FIRST TWO DAILY OVERTIME HOURS WORKED; ALL OTHER OVERTIME IS PAID AT THE HOLIDAY OVERTIME HOURLY RATE.
- G RATE APPLIES TO ALL HOURS WORKED ON SATURDAY.
- H RATE APPLIES TO FIRST 4 DAILY OVERTIME HOURS; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY RATE.
- I RATE APPLIES TO FIRST 8 HOURS. DOUBLE TIME THEREAFTER.
- J A MATERIAL HANDLER MAY BE UTILIZED IN RATIO OF ONE (1) MATERIAL HANDLER WITH ANY FIVE (5) JOURNEYMEN ON ANY GIVEN PROJECT.
- K PURSUANT TO SECTION 1815 OF THE LABOR CODE, "WORK PERFORMED BY EMPLOYEES OF CONTRACTORS IN EXCESS OF 8 HOURS PER DAY, AND 40 HOURS DURING ANY ONE WEEK, SHALL BE PERMITTED UPON PUBLIC WORK UPON COMPENSATION FOR ALL HOURS WORKED IN EXCESS OF 8 HOURS PER DAY AT NOT LESS THAN 1-1/2 TIMES THE BASIC RATE OF PAY."
- L IN ADDITION, AN AMOUNT EQUAL TO 3% OF THE BASIC HOURLY RATE IS ADDED TO THE TOTAL HOURLY RATE AND OVERTIME HOURLY RATES FOR THE NATIONAL EMPLOYEES BENEFIT BOARD. PURSUANT TO LABOR CODE SECTIONS 1773.1 AND 1773.8, THE AMOUNT PAID FOR THIS EMPLOYER PAYMENT MAY VARY RESULTING IN A LOWER TAXABLE BASIC HOURLY WAGE RATE, BUT THE TOTAL HOURLY RATES FOR STRAIGHT TIME AND OVERTIME MAY NOT BE LESS THAN THE GENERAL PREVAILING RATE OF PER DIEM WAGES.
- M RATE APPLIES TO THE FIRST 4 OVERTIME HOURS MONDAY THROUGH FRIDAY AND THE FIRST 8 HOURS WORKED ON SATURDAY. ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME RATE.
- N APPLIES TO THE FIRST 8 HOURS; ALL OTHER TIME WILL BE PAID AT DOUBLE THE STRAIGHT-TIME RATE. IF THE WORK WEEK IS TUESDAY THROUGH SATURDAY, THE

SATURDAY FOLLOWING A RECOGNIZED HOLIDAY WHICH FALLS ON MONDAY, SHALL BE PAID AT 1 1/2 STRAIGHT-TIME HOURLY RATE.

O THE FIRST WORKER ON THE SITE MUST BE A JOURNEYMAN TECHNICIAN GRADE #1 OR #2 OR ANY HIGHER PAID JOURNEYMAN CLASSIFICATION, SUCH AS JOURNEYMAN INSIDE WIREMAN; THEREAFTER THE CONTRACTOR MAY EMPLOY FIVE (5) JOURNEYMAN TECHNICIANS WITH A MAXIMUM OF TWO (2) LEVEL #5 TECHNICIANS PER CREW. THESE SIX (6) WORKERS SHALL CONSTITUTE A CREW ON THE JOB SITE.

P RATE APPLIES TO THE FIRST 4 DAILY OVERTIME HOURS AND THE FIRST 8 HOURS WORKED ON SATURDAY. ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME RATE.

Q DICTIONARY OF OCCUPATIONAL TITLES, FOURTH EDITION, 1977, U.S. DEPARTMENT OF LABOR.

R RATE APPLIES TO THE FIRST 4 DAILY OVERTIME HOURS AND THE FIRST 12 HOURS WORKED ON SATURDAY; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.

S INCLUDES AMOUNT WITHHELD FOR DUES CHECK OFF.

T INCLUDED IN BASIC HOURLY RATE.

U IN THE EVENT CONDITIONS OR CIRCUMSTANCES WHICH ARE BEYOND THE CONTROL OF THE EMPLOYER, PREVENTS EMPLOYEES FROM WORKING ON ANY ONE OF THE REGULAR MONDAY THROUGH FRIDAY WORK DAYS, THEN SATURDAY MAY BE SCHEDULED AS A MAKE-UP DAY AT THE EMPLOYEE'S REGULAR STRAIGHT TIME RATE.

V RATE APPLIES TO THE FIRST 2 DAILY OVERTIME HOURS AND THE FIRST 8 HOURS ON SATURDAY ONLY; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.

W INCLUDES AMOUNT WITHHELD FOR ADMINISTRATIVE DUES.

X RATE APPLIES TO THE FIRST 8 HOURS WORKED ON A SIXTH OR SEVENTH CONSECUTIVE DAY DURING ANY ONE CALENDAR WEEK UP TO 50 HOURS IN ANY ONE CALENDAR WEEK. ALL HOURS IN EXCESS OF 10 HOURS DAILY OR 50 HOURS WEEKLY ARE PAID AT THE HOLIDAY RATE. SATURDAYS IN THE SAME WORK WEEK MAY BE WORKED AT STRAIGHT-TIME IF JOB IS SHUT DOWN DURING THE NORMAL WORKWEEK DUE TO INCLEMENT WEATHER.

Y RATE APPLIES TO WORK ON HOLIDAYS ONLY; SUNDAYS ARE PAID AT THE SATURDAY OVERTIME HOURLY RATE.

Z AN ADDITIONAL \$0.25 PER HOUR WILL BE ADDED TO THE BASIC HOURLY RATE WHEN PERFORMING PAPERHANGING WORK.

AA DOUBLE TIME SHALL BE PAID FOR ALL HOURS WORKED OVER 12 HOURS IN ANY ONE DAY.

AB INCLUDES AN AMOUNT PER HOUR WORKED OR PAID FOR DUES CHECK OFF

AC SATURDAY IN THE SAME WORKWEEK MAY BE WORKED AT THE STRAIGHT-TIME HOURLY RATE IF IT IS NOT POSSIBLE TO COMPLETE FORTY HOURS OF WORK MONDAY THROUGH FRIDAY WHEN THE JOB IS SHUT DOWN DUE TO INCLEMENT WEATHER OR SIMILAR ACT OF GOD, OR BEYOND THE CONTRACTOR'S CONTROL.

AD RATE APPLIES TO THE FIRST 8 HOURS WORKED; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.

AE THE RATIO OF PLASTER TENDERS TO PLASTERERS SHALL BE AS FOLLOWS: THERE SHALL BE A PLASTER TENDER ON THE JOBSITE WHENEVER THERE IS A PLASTERER PERFORMING WORK ON THE JOBSITE, EXCEPT ON SMALL PATCH WORK WHERE ONLY ONE PLASTERER IS PERFORMING WORK. FOR INSIDE BROWN COATINGS THERE SHALL BE 2 PLASTER TENDERS FOR UP TO EVERY 3 PLASTERERS. FOR INSIDE FINISH COATINGS THERE SHALL BE 1 PLASTER TENDER FOR UP TO EVERY 3 PLASTERERS. ON OUTSIDE FINISH AND BROWN COATINGS AND FOR ALL OTHER WORK, THERE SHALL BE 1 PLASTER TENDER FOR UP TO EVERY 2 PLASTERERS.

AF INCLUDES AN AMOUNT PER HOUR WORKED OR PAID FOR SUPPLEMENTAL DUES.

AG ALL WORK PERFORMED AFTER TWELVE (12) HOURS IN A DAY SHALL BE PAID AT THE SUNDAY/HOLIDAY RATE.

AH RATE APPLIES TO THE FIRST EIGHT HOURS ON SATURDAY. ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME RATE. SATURDAY WORK MAY BE PAID AT THE STRAIGHT TIME RATE IF THE JOB IS SHUT DOWN DURING THE NORMAL WORK WEEK DUE TO INCLEMENT WEATHER.

AI INCLUDES AN AMOUNT WITHHELD FOR ADMINISTRATIVE DUES WHICH IS NOT FACTORED INTO OVERTIME AND AN AMOUNT FOR VACATION WHICH IS FACTORED AT 1.5 TIMES FOR ALL OVERTIME.

AJ INCLUDES AMOUNT FOR NATIONAL PENSION AND RETIREE'S X-MAS FUND.

AK AMOUNT INCLUDED IN BASIC HOURLY RATE AND FACTORED AT 1.5 TIMES FOR ALL OVERTIME.

AL INCLUDES AN AMOUNT FOR THE P.I.P.E. LABOR MANAGEMENT COOPERATION COMMITTEE AND THE CONTRACTOR EDUCATION & DEVELOPMENT FUND.

AM RATE APPLIES TO THE FIRST 2 DAILY OVERTIME HOURS AND THE FIRST 10 HOURS ON SATURDAY; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.

AN SATURDAYS IN THE SAME WORK WEEK MAY BE WORKED AT STRAIGHT-TIME IF JOB IS SHUT DOWN DURING THE NORMAL WORKWEEK DUE TO INCLEMENT WEATHER.

AO PIPE TRADESMEN SHALL NOT BE PERMITTED ON ANY JOB WITHOUT A JOURNEYMAN.

AP INCLUDES AN AMOUNT WITHHELD FOR ADMINISTRATIVE DUES WHICH IS NOT FACTORED IN THE OVERTIME RATES.

AQ SATURDAY MAY BE WORKED AT STRAIGHT-TIME RATE, PROVIDED THAT THE HOURS DO NOT EXCEED 8 HOURS PER DAY OR 40 HOURS PER WEEK.

AR DOUBLE TIME SHALL BE PAID FOR NEW YEAR'S DAY, EASTER SUNDAY, LABOR DAY, THANKSGIVING DAY, AND CHRISTMAS.

AS TRADESMEN SHALL ONLY BE USED IF THE FIRST WORKER ON THE JOB IS A LANDSCAPE/IRRIGATION FITTER, SECOND WORKER MUST BE A LANDSCAPE/IRRIGATION FITTER OR APPRENTICE LANDSCAPE/IRRIGATION FITTER. THE 3RD AND 4TH MAY BE A TRADESMAN. THE 5TH MUST BE A LANDSCAPE/IRRIGATION FITTER AND THEREAFTER TRADESMEN WILL BE REFERRED ON A 50-50 BASIS, TO JOURNEYMAN OR APPRENTICE.

AT INCLUDES AN AMOUNT FOR SUPPLEMENTAL PENSION FUND.

AU INCLUDES AMOUNT WITHHELD FOR WORKING ASSESSMENT.

AV RATE APPLIES TO ALL HOURS WORKED ON SATURDAY AND SUNDAY, HOWEVER, IF THE EMPLOYEE DID NOT COMPLETE FORTY (40) HOURS MONDAY THROUGH FRIDAY UP TO EIGHT (8) HOURS CAN BE WORKED AT THE STRAIGHT-TIME HOURLY RATE ON SATURDAY.

AW INCLUDES AN AMOUNT FOR THE SHEET METAL OCCUPATIONAL HEALTH INSTITUTE TRUST.

AX INCLUDES AMOUNT FOR 401(A) PLAN. PURSUANT TO LABOR CODE SECTIONS 1773.1 AND 1773.8, THE AMOUNT PAID FOR THIS EMPLOYER PAYMENT MAY VARY RESULTING IN A LOWER TAXABLE BASIC HOURLY WAGE RATE, BUT THE TOTAL HOURLY RATES FOR STRAIGHT TIME AND OVERTIME MAY NOT BE LESS THAN THE GENERAL PREVAILING RATE OF PER DIEM WAGES.

AY INCLUDES AN AMOUNT FOR INTERNATIONAL TRAINING INSTITUTE.

AZ INCLUDES AMOUNTS FOR NATIONAL ENERGY MANAGEMENT INSTITUTE (NEMI) FUND, SHEET METAL WORKERS' INTERNATIONAL SCHOLARSHIP FUND (SMWSF) AND INDUSTRY FUND.

BA ONE TECHNICIAN MAY BE EMPLOYED ON EACH JOB SITE. IN ADDITION, ONE (1) TECHNICIAN MAY BE EMPLOYED FOR EACH THREE (3) BUILDING TRADES JOURNEYMAN, OR

PORTION THEREOF, EMPLOYED ON THE SITE.

BB THE EMPLOYER MAY EMPLOY ONE UTILITY WORKER, PLUS ONE FOR EACH FIVE(5) BUILDING JOURNEYMAN OR PORTION THEREOF.

BC PURSUANT TO LABOR CODE SECTIONS 1773.1 AND 1773.8, THE AMOUNT PAID FOR THIS EMPLOYER PAYMENT MAY VARY RESULTING IN A LOWER TAXABLE BASIC HOURLY WAGE RATE, BUT THE TOTAL HOURLY RATES FOR STRAIGHT TIME AND OVERTIME MAY NOT BE LESS THAN THE GENERAL PREVAILING RATE OF PER DIEM WAGES.

BD INCLUDED IN STRAIGHT-TIME HOURLY RATE.

BE RATE APPLIES TO THE FIRST 8 HOURS WORKED ON A SIXTH OR SEVENTH CONSECUTIVE DAY DURING ANY ONE CALENDAR WEEK UP TO 50 HOURS IN ANY ONE CALENDAR WEEK. ALL OTHER TIME IS PAID AT THE HOLIDAY RATE.

RECOGNIZED HOLIDAYS: HOLIDAYS UPON WHICH THE GENERAL PREVAILING HOURLY WAGE RATE FOR HOLIDAY WORK SHALL BE PAID, SHALL BE ALL HOLIDAYS IN THE COLLECTIVE BARGAINING AGREEMENT, APPLICABLE TO THE PARTICULAR CRAFT, CLASSIFICATION, OR TYPE OF WORKER EMPLOYED ON THE PROJECT, WHICH IS ON FILE WITH THE DIRECTOR OF INDUSTRIAL RELATIONS. IF THE PREVAILING RATE IS NOT BASED ON A COLLECTIVELY BARGAINED RATE, THE HOLIDAYS UPON WHICH THE PREVAILING RATE SHALL BE PAID SHALL BE AS PROVIDED IN SECTION 6700 OF THE GOVERNMENT CODE. YOU MAY OBTAIN THE HOLIDAY PROVISIONS FOR THE CURRENT DETERMINATIONS ON THE INTERNET AT [HTTP://WWW.DIR.CA.GOV/OPRL/DPreWageDetermination.htm](http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm). HOLIDAY PROVISIONS FOR THE CURRENT OR SUPERSEDED DETERMINATIONS MAY BE OBTAINED BY CONTACTING THE OFFICE OF THE DIRECTOR - RESEARCH UNIT AT (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE: IN ACCORDANCE WITH LABOR CODE SECTIONS 1773.1 AND 1773.9, CONTRACTORS SHALL MAKE TRAVEL AND/OR SUBSISTENCE PAYMENTS TO EACH WORKER TO EXECUTE THE WORK. YOU MAY OBTAIN THE TRAVEL AND/OR SUBSISTENCE PROVISIONS FOR THE CURRENT DETERMINATIONS ON THE INTERNET AT [HTTP://WWW.DIR.CA.GOV/OPRL/DPreWageDetermination.htm](http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm). TRAVEL AND/OR SUBSISTENCE REQUIREMENTS FOR CURRENT OR SUPERSEDED DETERMINATIONS MAY BE OBTAINED BY CONTACTING THE OFFICE OF THE DIRECTOR - RESEARCH UNIT AT (415) 703-4774.