

**Meeting Date:** 6/25/2013

**Report Type:** Consent

**Report ID:** 2013-00391

**Title: Sacramento Valley Station Phase 2 Intermodal (T15029040) – Design-Assist Construction Services Agreement**

**Location:** District 3

**Issue:** The Design-Assist Construction Services contract will allow the City to utilize the contractor during the final design phase to maximize constructability of the project.

**Recommendation:** Pass a Motion awarding a contract to Rudolph & Sletten, Inc. for an amount not to exceed \$181,914 for Design-Assist services and foundation investigation for Phase 2 of the Sacramento Valley Station Intermodal project—the rehabilitation of the historic train depot.

**Contact:** Greg Taylor, Urban Design Manager, Project Manager, (916) 808-5268; Jerry Way, Director of Public Works, (916) 808-7100, Department of Public Works

**Presenter:** None

**Department:** Public Works Department

**Division:** Planning & Policy

**Dept ID:** 15001041

**Attachments:**

- 1-Description/Analysis
- 2-Background
- 3-Exhibit A (Contract-Rudolph and Sletten, Inc.)

**City Attorney Review**

Approved as to Form  
Kourtney Burdick  
6/19/2013 12:03:22 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
5/3/2013 10:47:03 AM

**Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 5/20/2013 8:22:57 AM

## Description/Analysis

**Issue:** On November 27, 2012, the City Council authorized the use of the design-assist project delivery method for Phase 2 of the Sacramento Valley Station Intermodal project—the rehabilitation of the historic train depot. Rudolph & Sletten, through a Request for Proposals process, was selected as the most qualified firm to construct the project. With this report, the Council is being asked to award a design-assist contract to Rudolph & Sletten in the initial not to exceed amount of \$181,914 for pre-construction services and foundation investigation. The cost for construction of the project, currently estimated at \$23.8 million, which does not include City contingency, will be presented to City Council at a later date for approval. If the Council approves the GMP at that time, Rudolph & Sletten will continue with construction of the project.

**Economic Impact:** None at this time. Economic impacts will be assessed upon award of the construction portion of the contract.

**Policy Considerations:** The recommendations in this report are consistent with:

- The City’s Strategic Plan goal to achieve sustainability and livability, while improving and expanding services to the local community.
- The 2030 General Plan vision to link Sacramento to the region by an extensive, efficient, and safe network of roadways, bridges, mass transit, bikeways, pedestrian trails, and sidewalks.

### Environmental Considerations:

**California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA):** The Federal Highway Administration (FHWA), in consultation with other federal agencies, including the Federal Railroad Administration (FRA), completed an environmental assessment (EA) of the entire Intermodal project (Phases 1-3), consistent with NEPA. FHWA determined that the project would not have a significant effect on the environment and accordingly issued a Finding of No Significant Impact (FONSI) in August 2009. The City also entered into a Section 106 Programmatic Agreement (PA) regarding treatment of cultural resources with Caltrans and pertinent state and federal agencies. FHWA authorized the City to proceed with implementation with the project, based in part on the conclusion that NEPA had been satisfied. Changes in the design since that time warrant additional review. FRA has indicated that these additional design features may be eligible

for an FRA categorical exclusion (CE), which covers the maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance of-equipment bases; and other existing railroad-related facilities. The City is in the process of submitting a request for the CE. CEQA review was completed for the track relocation activities (Phase 1) and improvement to the Depot (Phase 2). In June 2009, the City Council approved a Mitigated Negative Declaration and a Notice of Determination was filed.

**Sustainability Considerations:** The Sacramento Intermodal Transportation Facility (SITF) projects will provide various alternative transportation modes including: rail freight movement, passenger rail trains, light rail transit, intercity and local buses, taxicabs, bicycle and pedestrian travel modes, and future modes such as streetcar and California High Speed Rail. The Intermodal Phase 2 project will provide efficiencies, improved operations, customer-oriented enhancements, and greatly expanded usable space.

**Rational for Recommendation:** Rudolph & Sletten, Inc. was determined to be the most qualified firm for this work based on technical qualifications.

**Financial Considerations:** The current budget for all the intermodal projects that are currently funded is approximately \$198 million, consisting of federal, state, and local funding. In almost all cases, grant funding is restricted to specific activities for the Intermodal Project. For the Intermodal Phase 2 (Sacramento Valley Station) Project, the estimated total cost for design and construction is estimated at \$34 million.

Including the \$15 million of federal funding recently accepted (Resolution 2013-0103), the total available funding for this phase is \$34 million, with about \$30 million currently unobligated and reserved for the Phase 2 Intermodal work. This is sufficient to execute the agreement for \$181,914 with Rudolph & Sletten, Inc. and pay for future construction and construction engineering costs. Staff will return to Council with the GMP prior to moving forward with construction. There are no general funds planned or allocated for this project.

**Disadvantaged Business Enterprise (DBE):** This is a federally-funded project with fund administration involving the Federal Railroad Administration (FRA). The City will follow federal Disadvantaged Business Enterprise (DBE) requirements and ESBID rules will be held in abeyance. The contract award will comply with all federal DBE participation requirements.

## Background

The Sacramento Valley Station is undergoing a two-phase rehabilitation of the City-owned station. The current Structural Rehabilitation phase is scheduled for completion in Summer of 2013 and consists primarily of seismic upgrading and minor repairs, but will leave the majority of the building unimproved and unconditioned. Construction on Phase 2 of the Rehabilitation is scheduled to begin in late summer and will consist of installing new mechanical, plumbing and electrical systems, upgrade egress to current code, rehabilitate historic window and door systems, conserve the historic MacQuarrie mural, repair the painted main lobby plaster ceiling, relocate Amtrak operations to new areas of the building, and improve the building interior to a leasable state, including new ground floor retail uses.

The funding for Phase 2 comes from a \$15 million Federal TIGER IV funds grant with a local match of \$15 million. Under the terms of the grant, construction drawings are to be completed, ready for bid issuance, by June 30, 2013, in order to obligate funds. The funding agreement was accelerated by the Federal Railway Administration (FRA) and Council accepted the agreement on April 2, 2013.

The City has already contracted with a design firm—Zimmer Gunsul Frasca Architects LLP—to perform design services for Phase 2 of the Rehabilitation, and design is more than 60 percent complete at this time.

Using design-assist, as opposed to the traditional design-bid-build procurement method, allows the City to bring the contractor on during the final design phase—to consult on the design - in expectation of maximizing constructability and increasing efficiency.

The City issued a Request for Qualifications (RFQ) and received submissions from 13 construction firms.

The firms included (listed alphabetically):

- Arntz Builders, Inc.
- Clark/Unger Joint Venture
- Diede Construction, Inc.
- McCarthy Vanir, JV
- Otto Construction
- Plant Construction Company, L.P.
- Rudolph and Sletten, Inc.
- Skanska USA Building Inc.
- Turner Construction

A Consultant Review Panel, consisting of one staff from the Community Development Department Building Division and four consultants from architectural, construction and engineering firms, shortlisted the four most

qualified firms to meet the technical requirements of the work. The shortlisted firms were required to submit sealed fee proposals and participate in a presentation and interview before the Review Panel.

The shortlisted firms were (listed alphabetically):

- Clark/Unger Joint Venture
- Plant Construction Company, L.P.
- Rudolph and Sletten, Inc.
- Turner Construction

The top-ranked firm, Rudolph & Sletten, Inc., of Roseville, CA was selected for negotiations to the Agreement contained in this report for Council consideration. If City Council approves this contract, the contractor will work with the design team to prepare construction documents and will also develop a guaranteed maximum price (GMP) for construction of the project. Staff will return to present the GMP to City Council for approval prior to moving forward with construction.

Department: Public Works  
Division: Office of the Director  
Project Name: Intermodal Phase 2 – Sacramento Valley Station (T15029041)

## DESIGN-ASSIST WITH OPTION FOR A GUARANTEED MAXIMUM PRICE (GMP) CONTRACT

This **CONTRACT** is made at Sacramento, California as of \_\_\_\_\_, by and between the City of Sacramento, a municipal corporation ("CITY"), and:

**CONTRACTOR:**  
(Name and address)

**Rudolph and Sletten, Inc.**  
**1504 Eureka Road, Suite 200**  
**Roseville, CA 95661**

**PROJECT:**

**Intermodal Phase 2 – Sacramento Valley Station (T15029041)**  
401 I Street  
Sacramento, California 95814

### 1.00 SCOPE OF WORK

CONTRACTOR agrees to furnish all tools, equipment, apparatus, facilities, labor, material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of the CITY, all the Work called for in the Contract Documents, including the Request for Qualifications issued February 6, 2013. The Work shall be separated into two distinct phases, pre-construction and construction, and shall include:

**Pre-Construction Phase** shall include all research, site investigation, cost estimating, value engineering, trade off studies, design review, constructability review, scheduling, construction impacts, meetings, workshops, charrettes, presentations, participation in the preparation and packaging of construction documents, pre-qualifying bidders, securing all permits, obtaining bids for sub-contractors/suppliers, documenting results and all other work necessary to assist the CITY'S designer to develop a facility design within the Project Budget and Project Schedule, including those requirements identified in Exhibit F, Article 4.1, culminating in the preparation of a Guaranteed Maximum Price (GMP) for completion of all the WORK. If necessary, the GMP will be divided into a base proposal and (additive/deductive) alternates acceptable to the CITY.

**Construction Phase** shall include completing all construction, systems commissioning, testing and obtaining all permits to provide the CITY with a fully operational facility consistent with the Contract Documents and requirements of this contract. The CONTRACTOR shall not proceed with the Construction Phase unless and until the City Council accepts the GMP and authorizes the Construction Phase to proceed by approving a change order or other amendment to the Contract and the CITY issues a notice to proceed.

The Work above shall include CONTRACTOR assisting the CITY and the CITY's Designer in development of a final design solution within the available project schedule, project budget and meeting quality standards established by the CITY and CITY's Designer. WORK shall involve, but not be limited to, estimating, scheduling, market investigation, value engineering, constructability reviews, workshops, team participation meetings, drawing reviews, sub-contractor participation, construction, testing, commissioning, coordination of separate CITY consultants, vendors and contractors, and all similar services necessary to complete construction of the project, secure all permits, validate all testing, secure all occupancy permits and obtain all LEED (Platinum) Certification. CONTRACTOR shall provide all materials, equipment, tools, labor and additional resources necessary to complete construction of the project as described in and reasonably inferable from the Contract Documents in a process consistent with all environmental requirements and a quality standard acceptable to the CITY.

## **2.00 CONTRACT DOCUMENTS**

A. The Contract Documents, sometimes referred to as the "Contract," consist of the following documents and are intended to permit the parties to complete the WORK and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed below:

1. Change orders or other amendments to this Contract, including but not limited to the change order or amendment that accepts the GMP and authorizes the Construction Phase, with the more recent taking precedence over previous change orders/amendments in the event of a conflict
2. This Contract
3. TIGER Discretionary Grants Agreement (Exhibit H)
4. General Conditions (Exhibit A)
5. Special Conditions (Exhibit B)
6. Construction Drawings, Project Specifications, and Project Manual approved by the City Council
7. Standard Specifications for Public Construction, June 2007, including subsequent amendments ("Standard Specifications") applicable to off-site work and on-site primary utility infrastructure, grading, paving, and other applicable sections of the Standard Specifications as set forth in Exhibit I unless specifically superseded in the drawings and specifications
8. Required Construction Forms (Exhibit E)
9. RFQ submittal from CONTRACTOR.

Requirements established in item 6 above may be superseded or amended by designs, decisions or changes/modifications completed during work under items 7, 8 and/or 9 above, if the CITY and CONTRACTOR specifically acknowledge and mutually accept the itemized changes/modifications in writing.

B. Terms, words and phrases used in the Contract Documents shall have the meanings given them in the Special Conditions (Exhibit B).

C. The Contract Documents form the entire contract between CITY and CONTRACTOR and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents and this contract.

### **3.00 TIGER DISCRETIONARY GRANTS FUNDING**

This Project is being funded in part with federal Transportation Investment Generating Economic Recovery funds ("TIGER Discretionary Grants" funding), which is being distributed by the U.S. Department of Transportation, acting through the Federal Railroad Administration ("FRA"). The TIGER Discretionary Grants requirements, referenced in the grant agreement attached at Exhibit H are hereby incorporated in and made part of the Contract and constitute Contract Documents.

The CONTRACTOR, and the CONTRACTOR's subcontractors and suppliers shall be required to comply with all applicable TIGER Discretionary Grants requirements. Among those provisions referenced in Exhibit H are the Buy American provisions set forth in 49 USC 24405(a) (discussed further in Exhibit M) for the Project with respect to the use of steel, iron, and manufactured goods produced in the United States. Likewise, CONTRACTOR and this Project must comply with the Disadvantage Business Enterprise provisions at 49 C.F.R. Part 26 (discussed further in Exhibit L). And by signing this CONTRACT, CONTRACTOR hereby agrees that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.
2. If any Funds, other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this CONTRACT, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

CONTRACTOR shall require that the language of this certification be included in all subawards at tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subgrantees and subcontractors shall certify and disclose accordingly.

CONTRACTOR understands and agrees that CITY's decision to enter into this Contract depends in part upon CITY's receipt of the TIGER Discretionary Grants funds. If the CITY does not receive these funds, CITY may terminate this Contract upon written notice to

CONTRACTOR. Upon receipt of such notice, CONTRACTOR shall cease all Work, and CITY's only obligation will be to pay for WORK performed prior to the date of the CITY's notice of termination, and CITY will have no further obligations to CONTRACTOR. Termination on this basis is in addition to the CITY's right to terminate under any other provisions of the Contract.

#### **4.00 PREVAILING WAGE REQUIREMENTS FOR PRE-CONSTRUCTION AND CONSTRUCTION PHASES OF THE WORK**

Because this project is being funded with TIGER Discretionary Grants funds, it is subject to both federal and State prevailing wage requirements pursuant to Section 3.60.180 of the Sacramento City Code. Federal prevailing wage requirements are established pursuant to the federal Davis-Bacon Act, which requires the payment of wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. State prevailing wages are established by the Director of the California Department of Industrial Relations under the provisions of section 1773 of the California Labor Code. Copies of the federal and State prevailing wage rates are on file with the CITY, and shall be made available on request.

To comply with the above requirements, for each category of labor or services to which a prevailing wage rate applies, the CONTRACTOR and all subcontractors shall pay either the federal prevailing wages required pursuant to the Davis-Bacon Act, or the State prevailing wages established by the Director of the California Department of Industrial Relations, whichever is higher. All questions regarding the payment of prevailing wages should be directed to the CITY's Labor Compliance section at (916) 808-1923.

For the Construction Phase of the Work, CONTRACTOR, at least five days prior to bidding the Work to subcontractors, shall inform CITY of its intent to bid the Work. At that time, CITY will provide CONTRACTOR with the then-current Davis-Bacon rates, and then again within ten days of the bid opening. CONTRACTOR understands and agrees that it will need to issue an addendum to any subcontracting bid to inform bidders of updated wage-rates.

CONTRACTOR agrees:

1. CONTRACTOR and subcontractors shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;
2. CONTRACTOR will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work;
3. There may be withheld from the contractor so much of accrued payments as the CITY considers necessary to pay to laborers and mechanics employed by CONTRACTOR or

any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to CONTRACTOR or subcontractors or their agents; and

4. To abide by all terms in Exhibit K.

The City of Sacramento has an approved Labor Compliance Program. CONTRACTOR and every lower-tier subcontractor is required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the CITY.

Electronic submittal will be done through a web-based system. CONTRACTOR and each subcontractor will be given a Log On identification and password to access the City of Sacramento Reporting system. Use of the system may entail additional data entry of weekly payroll information including employee identification labor classification, total hours worked and hours worked on this project, wage and benefit rates paid, etc. The contractor's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.

These requirements flow down to every lower-tier subcontractor and vendor required to provide labor compliance documentation.

All questions regarding the Labor Compliance Program should be directed to the Labor Compliance Section at (916) 808-1923.

## **5.00 OWNERSHIP OF INFORMATION**

### **5.01 Work Product**

CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Contract. In this Contract, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

### **5.02 CITY's Right to Information at Termination**

CITY retains all rights to information. Should this contract be terminated the CITY retains the right to utilize consultants, professionals, contractors, sub-contractors and others hired directly or indirectly by the CONTRACTOR to prepare the information. CONTRACTOR agrees to encourage and facilitate the completion of the information, and not prohibit or discourage designers, professionals, contractors, sub-contractors and others hired directly or indirectly by the CONTRACTOR from entering into contracts to complete the information.

### **5.03 CONTRACTOR Requirement to Use Licensed Professionals**

CONTRACTOR shall, consistent with applicable state licensing laws, provide qualified licensed design professionals for any and all design work completed by CONTRACTOR, including all deferred submittals for such items as "fire suppression", "fire alarm", "building security alarm" and similar design and documentation. Qualified licensed design professionals may include licensed contractors preparing designs for work they will install under the provisions of Division 3 of the Business and Professions Code by Section 5537.2 or 6737.3. Nothing in the Contract Requirements is intended or deemed to create any legal or contractual relationship between CITY and any design consultant employed by the CONTRACTOR.

### **6.00 CONTRACT PRICE**

#### **6.01 Contract Price**

A. CITY shall pay CONTRACTOR in accordance with the requirements set forth in this section and Exhibit A. Compensation to the CONTRACTOR shall be separated into two phases of work as described in Section 1.00 above. The Pre-Construction Phase covers all work completed prior to CITY acceptance of a Guaranteed Maximum Price (GMP). The Construction Phase covers all remaining work as outlined in this contract. CONTRACTOR acknowledges and agrees that CITY is not obligated to accept the GMP, nor authorize the Construction Phase to proceed, and that CITY shall have no obligations whatsoever under the Contract for the Construction Phase unless and until the City Council accepts the GMP and authorizes the Construction Phase to proceed by approving a change order or other amendment to the Contract.

B. CITY agrees to pay CONTRACTOR for the Work as follows:

1. Payment for the Pre-Construction Phase (including all services and reimbursable expenses) shall not exceed \$181,914.
2. Payment for the Construction Phase (including all Work, services, reimbursable expenses, construction, materials and associated expenses for Construction Phase activities) shall not exceed the GMP.

The GMP shall be derived during the Pre-Construction Phase in accordance with Section 6.03 and Exhibit J. The CITY, in its sole discretion, may approve or reject the GMP, which will be presented to the City Council as a change order or other amendment to this CONTRACT. If the CITY rejects the GMP, the CITY has no obligation to proceed with the Construction Phase and CONTRACTOR is not entitled to any compensation for the Construction Phase. As of the effective date of this CONTRACT, the CONTRACTOR and CITY anticipate the GMP will not exceed \$23.8 million. Nonetheless, CONTRACTOR and CITY agree that final authority to accept the GMP rests solely with the City Council, who may only exercise that authority by approving a change order or other amendment to this CONTRACT.

3. Total compensation for the Pre-Construction Phase & Construction Phase shall not exceed the sum of items 1 and 2, above.

4. Compensation for services and reimbursable expenses during the Pre-Construction Phase shall not be subject to retention.
5. Compensation for design support services, permits, design based reimbursable expenses and fees during the Construction Phase shall not be subject to retention, but all other Work related to the project shall be subject to retention. (Refer to Exhibit A – Section 2 – Progress Payments and Final Payment).
6. During the Construction Phase CONTRACTOR shall submit separate invoices for design support services and expenses versus construction-related costs subject to retention in accordance with Exhibit A.

#### **6.02 Cost of the WORK**

The term “Cost of the WORK” shall mean costs reasonably incurred by CONTRACTOR in the proper performance of the WORK and shall be borne by the CONTRACTOR, including but not limited to the items that will be paid by CONTRACTOR as indicated below. “Cost of the WORK” **shall not** include the items that will be paid for by CITY as indicated below.

- A. CITY shall pay for the City Building Department plancheck, permit, and inspection, but will not pay for the following, which will be paid for by CONTRACTOR:
  1. Business Operations Tax (BOT) associated with the building permit;
  2. Any overtime charges related to the plancheck, permit or inspections;
  3. Any request for inspections outside normal working hours for the CITY; and
  4. Any penalties, re-inspection fees or similar charges resulting from actions or inaction by CONTRACTOR;
- B. CONTRACTOR shall pay for the following furniture-related expenses:
  1. Coordination and installation of conduits, pull wires, conductors, junction boxes, distribution boxes, and connection of all power and communication for all furniture as required to complete the installation;
  2. Costs to relocate Amtrak’s property; and
  3. Contractor shall coordinate and conduct all equipment, system and furniture relocation necessary to maintain uninterrupted operation in the building.
- C. CITY shall pay for the soils report.
- D. CONTRACTOR shall pay for the cost of hazardous materials investigation and abatement of existing materials, and all monitoring and clearance testing necessary to document completion of the abatement, as well as any hazardous materials investigation or abatement resulting from direct or indirect actions by the CONTRACTOR as identified in the reports titled “Pre-Renovation Hazardous Materials Investigation Sacramento Valley Depot 401 I Street Sacramento, California, Enercon Project Number: ENMISC 2236, dated March 2, 2011, the CITY’s Geophysical Survey and Geoprobe Assessment, discussed in Section 4 of Exhibit B, and any subsequent amendments performed prior to the start of the Construction Phase.

- E. CITY shall pay for the cost of construction materials testing and inspection, including LEED testing and LEED commissioning, but will not pay for the following, which will be paid for by CONTRACTOR:
1. Cost of retesting, overtime or return visits by testing personnel.
  2. Cost of all Acceptance Testing and documentation required under Title 24. CONTRACTOR shall be the "Testing Authority" for all Acceptance Testing required as defined by Title 24.

**6.03 The Guaranteed Maximum Price (GMP)**

A. GMP Proposal:

1. Upon completion of Pre-Construction Phase services, CONTRACTOR shall submit to CITY a GMP Proposal that includes the following:
  - a. A list of assumptions made by CONTRACTOR in preparing GMP;
  - b. A complete schedule of values, allowances, and unit prices for the Cost of the Work;
  - c. Calculations as required by the Contract Documents;;
  - d. A list of qualified subcontractors and corresponding scopes of works and cost;
  - e. DBE compliance documentation;
  - f. A performance schedule;
  - g. All documentation required in Exhibits "E" and "F";
  - h. A list of alternates and their associated cost and time impact for completion of all the work described in the Contract Documents if the entire project cannot be completed within the approved schedule;
  - i. All bonds and insurance necessary for completion of the WORK.
  - j. All work associated with deferred submittals.

The documents described above shall be used as the basis for the GMP and shall be identified in a supplemental document ("GMP Exhibit") prepared by CONTRACTOR.

2. The GMP shall include a Contingency which will be identified in the "GMP Exhibit". The Contingency is available for CONTRACTOR'S exclusive use for costs that are incurred in performing the WORK that are not included in a specific line item or the basis for a Change Order completed during Construction Phase activities. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming WORK, costs associated with design errors or omissions that are reasonably inferable from the Contract Documents and Subcontractor defaults. The Contingency is not available to CITY for any reason, including changes in scope, except where scope changes are necessary to meet the requirements in the Contract Documents. Contingency funds remaining at the end of the project shall be returned to the CITY. Contingency funds shall be tracked and documented by CONTRACTOR with detailed and summary breakdowns, projections and supporting documentation acceptable to the CITY.

3. **Review and Adjustment to GMP Proposal:** After submission of the GMP Proposal, CONTRACTOR and CITY shall meet to discuss and review the GMP Proposal. The GMP shall include detailed cost breakdowns for all items, including a description of the scope of work for all vendors and sub-contractors, shared resources, contractor supplied materials and equipment, allowances and similar information to disclose the detailed distribution of all costs. If CITY has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented or if additional detail is desired by the CITY, written notice shall be provided to CONTRACTOR. CONTRACTOR shall, upon receipt of CITY's notice, make appropriate adjustments to the GMP Proposal and resubmit to CITY.
4. The following rates and fees are part of this CONTRACT:
  - a. Fee: 3% of the cost of Work including General Conditions, to be converted to a lump sum amount at the execution of the GMP if approved by the City Council
  - b. Liability Insurance: 1.1% of the GMP amount
  - c. Bond: .74% of the GMP amount
  - d. General Conditions: To be mutually agreed upon by the parties upon acceptance of the GMP.

**B. CITY Action of the GMP Proposal:**

1. **Acceptance of the GMP:** The GMP proposal will become the GMP upon approval by the Sacramento City Council of a change order or other amendment to the Contract that accepts the GMP and authorizes the Construction Phase to proceed.
2. **Failure to Accept the GMP Proposal:** If CITY rejects the GMP Proposal, or fails to notify CONTRACTOR in writing on or before 90 calendar days following CITY acknowledgement of receiving a complete GMP Proposal the GMP Proposal shall be deemed withdrawn and of no effect. In such event, CITY and CONTRACTOR shall meet and confer as to how the Project will proceed, with CITY having the following options:
  - a) CITY may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by CONTRACTOR the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with the schedule set forth in the GMP; or
  - b) CITY may negotiate modifications and/or supplemental services necessary to achieve an acceptable GMP; or
  - c) CITY may terminate this Contract, in which case CITY shall have no further obligations to Contractor, other than payment for Pre-Construction Phase services under this Contract.

C. Excess Costs; Savings

1. CONTRACTOR does not guarantee the exact cost of any specific line item provided as part of the GMP, but CONTRACTOR agrees that CITY shall not have any obligation to pay for any Cost of the Work that exceeds the GMP accepted by CITY, and that CONTRACTOR shall be responsible for paying all costs of completing the WORK which exceed the GMP.
2. If the sum of the actual Cost of the WORK is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall remain with CITY and the CONTRACTOR'S Fee identified in 6.03(A)(4) shall not be reduced by the same amount upon issuance of the final payment to the CONTRACTOR.

## 7.00 TERMINATION

### 7.01 Termination after Completion Date-Construction Phase

In addition to any other rights CITY may have, if any services or work required under the Contract (including but not limited to punch list items) are not completed as of the Completion Date-Construction Phase (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), CITY may terminate the Contract at any time after the Completion Date-Construction Phase ( as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), by providing a written notice to CONTRACTOR specifying the date of termination. Such notice also may specify conditions or requirements that CONTRACTOR must meet to avoid termination of the Contract on such date. If CONTRACTOR fails to fulfill all such conditions and requirements by such termination date, or, if no such conditions or requirements are specified, CONTRACTOR shall cease rendering services and performing work on such termination date, and shall not be entitled to receive any compensation for services rendered or work performed after such termination date. In the event of such termination, CONTRACTOR shall remain liable to CITY for liquidated damages incurred for any period of time prior to the termination date.

In addition to any other charges, withholdings or deductions authorized under the Contract or any Laws or Regulations, if CITY terminates the Contract pursuant to this section, CITY may withhold and deduct from any payment and/or retention funds otherwise due CONTRACTOR any sum necessary to pay the CITY's cost of completing or correcting, or contracting for the completion or correction of, any services or work under the Contract that are not completed to the satisfaction of the CITY or that otherwise are deficient or require correction as of such termination date, including but not limited to incomplete punch list items. Such costs shall include all of the CITY's direct and indirect costs incurred to complete or correct such services or work, including the CITY's administrative and overhead costs. If the amount of payment(s) and/or retention funds otherwise due the CONTRACTOR are insufficient to pay such costs, CITY shall have the right to recover the balance of such costs from the CONTRACTOR and/or its Surety(ies).

### 7.02 Termination for Convenience

Upon written notice to the CONTRACTOR, the CITY may at any time, without cause and without prejudice to any other right or remedy of the CITY, elect to terminate the Contract for the

convenience of CITY. In such case, the CONTRACTOR shall be paid (without duplication of any items, and after deduction and/or withholding of any amounts authorized to be deducted or withheld by the Contract Documents or any Laws or Regulations):

1. For Work executed in accordance with the Contract Documents prior to the effective date of termination and determined to be acceptable by the Engineer, including fair and reasonable sums for overhead and profit on such Work;
2. For reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and
3. For reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid for any loss of anticipated profits or revenue for any Work not performed prior to termination, nor for any economic loss arising out of or resulting from such termination, except for the payments listed in this section. CONTRACTOR's warranty under Exhibit A of this Agreement shall apply, and CONTRACTOR shall remain responsible for all obligations related to such warranty, with respect to all portions of the Work performed prior to the effective date of the termination for convenience pursuant to this section. The CITY shall be entitled to have any or all remaining Work performed by other contractors or by any other means at any time after the effective date of a termination for convenience pursuant to this section.

### **7.03 Termination by Breach of Contract**

If CONTRACTOR abandons the Work under this Contract, or if the Contract or any portion of the Contract is sublet or assigned without the consent of the CITY, or if the Engineer determines in the Engineer's sole discretion that the conditions of the Contract in respect to the rate of progress of the Work are not being fulfilled or any part thereof is unnecessarily delayed, or if CONTRACTOR violates or breaches, or fails to execute in good faith, any of the terms or conditions of the Contract, or if CONTRACTOR refuses or fails to supply enough properly skilled labor or materials or refuses or fails to make prompt payment to subcontractors for material or labor, or if CONTRACTOR disregards any Laws or Regulations or proper instruction or orders of the Engineer, then, notwithstanding any provision to the contrary herein, the CITY may give CONTRACTOR and its Sureties written notification to immediately correct the situation or the Contract shall be terminated.

In the event that such notice is given, and, in the event such situation is not corrected, or arrangements for correction satisfactory to the CITY are not made, within ten (10) calendar days from the date of such notice or within such other period of time as may be specified by the CITY in the notice, the Contract shall upon the expiration of said period cease and terminate. In the event of any such termination, CITY may take over the Work and prosecute the Work to completion, or otherwise, and the CONTRACTOR and its Sureties shall be liable to CITY for any cost occasioned CITY thereby, as hereinafter set forth.

In the event CITY completes the Work, or causes the Work to be completed, no payment of any kind shall be made to CONTRACTOR until the Work is complete. The cost of completing the Work, including but not limited to, extra costs of project administration and management incurred by CITY, both direct or indirect, shall be deducted from any sum then due, or that becomes due, to CONTRACTOR from CITY. If sums due to CONTRACTOR from CITY are less than the cost of

completing the Work, CONTRACTOR and its Sureties shall pay CITY a sum equal to this difference on demand. In the event CITY completes the Work, and there is a sum remaining due to CONTRACTOR after CITY deducts the costs of completing the Work, then CITY shall pay such sum to CONTRACTOR. The CONTRACTOR and CONTRACTOR's Sureties shall be jointly and severally liable for all obligations imposed on CONTRACTOR hereunder.

No act by CITY before the Work is finally accepted, including, but not limited to, exercise of other rights under the Contract, actions at law or in equity, extensions of time, payments, assessments of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach of CONTRACTOR, shall be construed to be a waiver or estoppel of the CITY's right to act pursuant to this Section upon any subsequent event, occurrence or failure by CONTRACTOR to fulfill the terms and conditions of the Contract. The rights of CITY to terminate the Contract pursuant to this Section and pursuant to Sections 7.01 and 7.02 are cumulative and are in addition to all other rights of CITY pursuant to the Contract and at law or in equity.

#### **8.00. CONTRACTOR BANKRUPT**

If CONTRACTOR should commence any proceeding under the Bankruptcy Act, or if CONTRACTOR be adjudged a bankrupt, or if CONTRACTOR should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of CONTRACTOR's insolvency, then the CITY may, without prejudice to any other right or remedy, terminate the Contract and complete the WORK by giving notice to CONTRACTOR and his surety. CONTRACTOR's Surety shall have the right to complete the WORK by commencing within thirty (30) calendar days; and, in the event CONTRACTOR's Surety fails to commence work within thirty (30) calendar days, CITY shall have the right to complete, or cause completion of the WORK.

#### **9.00 PERFORMANCE AND PAYMENT BONDS**

Prior to CITY's acceptance of the GMP, CONTRACTOR shall provide a Performance Bond and a Payment Bond to the CITY, each for a sum equal to one hundred percent (100%) of the GMP. Each Bond shall be executed by a surety insurer admitted and duly authorized to transact business in the State of California. If the GMP is increased by a Change Order, CONTRACTOR shall increase the Performance and/or Payment Bond amount(s) if and to the extent required by the CITY.

Entire cost of Payment and Performance Bond shall be due and payable upon submission of first payment request for Construction Phase as Bond is billed as a lump sum upon issuance.

#### **10.00 SURETIES' OBLIGATIONS UPON TERMINATION**

If the CITY terminates the Contract pursuant to Section 7.03 or Section 8.00 above:

- A. The Surety under CONTRACTOR's performance bond shall be fully responsible for all of the CONTRACTOR's remaining obligations of performance under the Contract as if the Surety were a party to the Contract, including without limitation CONTRACTOR's obligations, as provided in the Contract Documents, to complete and provide a one-year

warranty of the entire Work, pay liquidated damages and indemnify, defend and hold harmless CITY, up to the full amount of the performance bond.

- B. The Surety under CONTRACTOR's payment bond shall be fully responsible for the performance of all of the CONTRACTOR's remaining payment obligations for work, services, equipment or materials performed or provided in connection with the Work or any portion thereof, up to the full amount of the payment bond.

#### **11.00 INDEMNITY AND HOLD HARMLESS**

- A. CONTRACTOR shall defend, hold harmless and indemnify the CITY, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.
- B. The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 11, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. The provisions of this Section 11 shall survive any expiration or termination of the Contract.

#### **12.00 INSURANCE REQUIREMENTS**

During the entire term of this Contract, except as provided otherwise below, and until completion and final acceptance of the Work as provided in the Contract Documents, CONTRACTOR shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Contract. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required of or carried by the CONTRACTOR.

A. Minimum Scope and Limits of Insurance Coverage

1. Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$5,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

2. Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$3,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

3. Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.

4. Pollution Liability:

a. Prior to, and as a condition of, CITY's acceptance of the GMP, CONTRACTOR shall obtain Pollution Liability insurance. This insurance shall be written in comprehensive form either as a separate policy or as an endorsement to CONTRACTOR's general liability coverage and shall cover liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of any Work to be performed under the Contract, including liability for and defense of lawsuits and regulatory actions. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Coverage shall apply to sudden as well as gradual pollution conditions, including without limitation conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. The liability limits shall be not less than:

for	i.	Combined Single Limit each occurrence:	\$5,000,000
	ii.	General Aggregate:	\$10,000,000

b. If the coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the award date of the Contract.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after final payment.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract award date, the CONTRACTOR must purchase extended reporting period coverage for a minimum of five years after final payment.
4. A copy of the claims reporting requirements must be submitted to the CITY for review.
5. If the Work involves lead-based paint or asbestos identification/remediation, the CONTRACTOR's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the Work involves mold identification/remediation, the CONTRACTOR's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

#### B. Additional Insured Coverage

1. Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

2. Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

#### C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance

maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

3. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 12 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

1. CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative designated by CITY. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

2. The CITY may withdraw its offer of contract or cancel the Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Contract if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this section 12, except that subcontractors must maintain commercial general liability insurance, automobile liability insurance, and pollution liability insurance when applicable, with a limit of not less than one million dollars (\$1,000,000) per occurrence, or in accordance with Contractor's Bidding Requirements, whichever provides the CITY the most protection.

G. Property Insurance

1. CITY shall purchase and maintain without interruption, in a company or companies lawfully authorized to do business in California, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the full replacement cost thereof. Such property insurance shall be maintained, otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until completion and final acceptance of all Work or until no person or entity other than the CITY has an insurable interest in the property required to be covered, whichever is later. This insurance shall provide for losses to be payable directly to the CITY, CONTRACTOR, or any Subcontractor, as named insureds or loss payees, as their interests may appear.

2. This property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of lightning, fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, windstorm, water damage, damage caused by frost and freezing, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the CONTRACTOR's or architect's services and expenses (including the services and expenses of Subcontractors and subconsultants) required as a result of such insured loss. If and when requested in writing by CITY, this property insurance shall include comprehensive boiler and machinery coverage including coverage for installation and testing.

3. This property insurance shall cover portions of the Work stored on and off the Project site, and also portions of the Work in transit.

4. City will provide property insurance coverage substantially equivalent to the coverage described in this subsection G. Upon CITY's written notification to CONTRACTOR of CITY's election to do so, provided at any time prior to CITY's acceptance of the GMP, CONTRACTOR shall have no obligation to provide property insurance coverage under this subsection G, and any costs incurred by CONTRACTOR to obtain property insurance coverage of any kind with respect to the Work shall be the sole responsibility of CONTRACTOR and shall not be paid by CITY. If CITY elects to provide property insurance coverage, CITY shall provide suitable written evidence of such coverage to CONTRACTOR not more than 30 days after CITY's acceptance of the GMP. The parties acknowledge and agree that such coverage, if provided by CITY, may not include coverage for earthquake and may carry a deductible of up to \$100,000. CITY shall be responsible for the deductible for the CITY's builder's risk policy, except that CONTRACTOR shall fund the first \$10,000 of any claim made by CONTRACTOR and/or any Subcontractor of any tier for a loss covered by such policy.

### **13.00 FAILURE TO MAINTAIN BONDS OR INSURANCE**

If, at any time during the performance of this Contract, CONTRACTOR fails to maintain any item of the bonds and/or insurance required under the Contract in full force and

effect, CONTRACTOR shall immediately suspend all work under the Contract and notify CITY in writing of such failure. After such notice is provided, or if CITY discovers such failure and notifies CONTRACTOR, the CITY thereafter may withhold all Contract payments due or that become due until notice is received by CITY that such bonds and/or insurance have been restored in full force and effect and that the premiums therefor have been paid for a period satisfactory to the Division of Risk Management. CONTRACTOR shall not resume work until notified by CITY to do so, and the CITY shall have no responsibility or liability for any costs incurred by CONTRACTOR as a result of such suspension of Work.

In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Contract will be sufficient cause for termination of the Contract by CITY.

The CONTRACTOR shall be solely responsible for, and shall defend, indemnify and hold harmless the CITY, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of Work or termination of the Contract under the provisions of this Section.

#### **14.00 REPRESENTATIVES OF THE PARTIES**

The **CITY Representative** for this Contract is:

Greg Taylor, AIA, LEED AP  
915 I Street, 2nd Floor  
Sacramento, CA 95814  
(916) 808-5268  
gtaylor@cityofsacramento.org

All CONTRACTOR questions pertaining to this Contract shall be referred to the CITY Representative or the Representative's designee.

The **CONTRACTOR Representative** for this Contract is:

John Home, Project Executive  
1504 Eureka Road, Suite 200  
Roseville, CA 95661  
(916) 781-8001  
jhome@rsconst.com

All CITY questions pertaining to this Contract shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth in Section 7.00 of this Contract. Unless otherwise provided in this Contract, all correspondence to the CITY shall be addressed to the CITY Representative.

#### **12.00 GENERAL REQUIREMENTS:**

- A. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Contract. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- B. **General Provisions.** In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Contract, including without limitation any document relating to the scope of services or payment therefore, the General Provisions shall control over said terms or conditions.
- C. **Non-Discrimination in Employee Benefits.** This Contract is subject to the provisions of Sacramento Municipal Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento Municipal Code Chapter 3.54 are summarized in Exhibit D. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
- D. **Authority.** The person signing this Contract for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Contract on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
- E. **References.** Titles, headings and similar references contained herein are solely to facilitate reference to various provisions of the contract and in no way affect or limit the interpretations of the provisions to which they refer.
- F. **Attachments and Exhibits.** All attachments and exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

For: John Shirey, City Manager

APPROVED TO AS FORM:

*Kurtene C. Burdick*

City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Attachments

- Exhibit A - General Conditions
- Exhibit B - Special Conditions
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - Non-Discrimination in Employee Benefits
- Exhibit E - Required Contract Forms
- Exhibit F - Design Support Services
- Exhibit G - Hourly Professional Rates
- Exhibit H - TIGER Discretionary Grants Agreement
- Exhibit I - Standard Specifications for Public Works Construction
- Exhibit J - Guaranteed Maximum Price Form
- Exhibit K - Davis Bacon Requirements
- Exhibit L - Disadvantaged Business Enterprise Guidelines
- Exhibit M - Buy American Guidelines
- Exhibit N - Liquidated Damages Assessment
- Exhibit O - Geophysical Survey and Geoprobe Assessment Area

**CONTRACTOR: Rudolph and Sletten, Inc.**

\_\_\_\_\_  
Federal I.D. No.

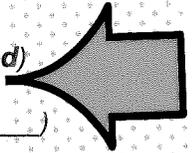
\_\_\_\_\_  
State I.D. No.

*1014001*

\_\_\_\_\_  
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- \_\_\_\_ Individual/Sole Proprietor
- \_\_\_\_ Partnership
- Corporation (**two signatures required**)
- \_\_\_\_ Limited Liability Company
- \_\_\_\_ Other (please specify: \_\_\_\_\_)



*Martin Sisemore*

\_\_\_\_\_  
**Martin Sisemore – President & CEO**

*Ryan Soroka*

\_\_\_\_\_  
**Ryan Soroka – Interim Controller**

\_\_\_\_\_  
Print Name and Title

**GENERAL CONDITIONS****1. PROGRESS PAYMENTS AND FINAL PAYMENT**

Subject to the terms and conditions of the Contract, CITY shall cause payments to be made upon demand of CONTRACTOR as follows:

- (A) On the first of the month during the Pre-Construction Phase, the CONTRACTOR shall present to the CITY an itemized invoice showing the amount of labor, reimbursables, and materials incorporated in the WORK through the twenty-fifth (25) calendar day of the preceding month; the CITY shall inspect the invoice and, if approved, the CITY shall process the invoice for payment.
- (B) On the first of the month during the Construction Phase, the CONTRACTOR shall present to the CITY two separate documents. The first document shall be an itemized invoice for support services and related reimbursable expenses not subject to retention and conforming to 1.A above. The second document shall be a pay request and associated schedule of values showing the amount of labor and materials incorporated in the WORK through the twenty-fifth (25) calendar day of the preceding month; the CITY shall inspect the pay request and associate schedule of values. Pay requests shall be accompanied by certified payroll and wage payment information in accordance with the CITY's Labor Compliance Program requirements. Such materials shall be submitted electronically if and as required by the CITY. If pay request, schedule of values, and Labor Compliance documents are approved, the CITY shall issue a certificate for ninety-five percent (95%) of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations. Refer to detailed documentation requirements in Exhibit E for construction related activities. CONTRACTOR may be required to prepare and submit payment applications, including updated Schedule of Values, using the spreadsheet provided by the CITY.
- (C) No inaccuracy or error in said monthly invoice(s) shall operate to release CONTRACTOR or Surety from damages arising from such work or from enforcement of each and every provision of the Contract Documents, and CITY shall have the right subsequently to correct any error made in any invoice for payment.
- (D) CONTRACTOR shall not be paid for any defective or improper work.

- (E) CITY shall pay the retention under this contract, if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, sixty (60) days after CITY files a Notice of Completion with the Sacramento County Recorder's Office. Acceptance by CONTRACTOR of said final payment shall constitute a waiver of all claims against CITY arising under the Contract Document, except for disputed claims in stated amounts that the CONTRACTOR specifically reserves in writing, but only to the extent that the CONTRACTOR has complied with all procedures and requirements applicable to the presentation and processing of such claim(s) under the Contract Documents. CONTRACTOR shall be entitled to substitute securities for retention or to direct that payments of retention be made into escrow, as provided in Public Contract Code Section 22300, upon execution of the CITY's Escrow Agreement for Security Deposits in Lieu of Retention.
- (F) The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code Section 20104.50, the date that the CITY receives a statement jointly approved by the CONTRACTOR and the CITY as provided above shall be deemed to constitute the date that CITY receives an undisputed and properly submitted payment request from the CONTRACTOR. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Public Contract Code Section 20104.50.

## **2. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR**

When, under the provisions of this contract, CITY shall charge any sum of money against CONTRACTOR, CITY shall deduct and retain the amount of such charge from the amount of the next succeeding progress payment(s), or from any other moneys due or that may become due CONTRACTOR from CITY. If, on completion/termination of the Contract, sums due CONTRACTOR are insufficient to pay CITY's charges against CONTRACTOR, CITY shall have the right to recover the balance from CONTRACTOR or CONTRACTOR's sureties.

## **3. COMMENCEMENT AND PROSECUTION OF WORK**

The CITY shall issue a separate Notice to Proceed for each phase of the WORK under this contract.

The Pre-Construction Phase Notice to Proceed shall not be issued until a fully executed contract has been issued by the CITY. CONTRACTOR shall commence the WORK for Pre-Construction Phase activities on or before five (5) calendar days from and after receipt of the written Notice to Proceed on Pre-Construction Phase activities from CITY.

The Construction Phase Notice to Proceed shall not be issued until the CITY has accepted the Guaranteed Maximum Price (GMP) as provided in the Contract and CONTRACTOR provides bonds and insurance certificates acceptable to the CITY. CONTRACTOR shall commence the WORK for Construction Phase activities on or before five (5) calendar days from and after receipt of the written Notice to Proceed on Construction Phase activities from CITY.

CONTRACTOR shall diligently prosecute the WORK to final completion of the appropriate stage. The phrase "commence the WORK" means to engage in design review activities in Pre-Construction Phase or to engage in review and coordination of the Construction Drawings and Specifications in Construction Phase.

#### **4. TIME OF COMPLETION**

Pre-Construction Phase activities shall be brought to completion in the manner provided for in the Contract Documents on or before 160 calendar days (hereinafter called the "Completion Date – Pre-Construction Phase") from the date of the Notice to Proceed with Pre-Construction Phase activities unless extensions of time are granted in accordance with the Contract Documents.

Construction Phase activities shall be brought to completion in the manner provided for in the Contract Documents on or before 790 calendar days (hereinafter called the "Completion Date – Construction Phase") from the date of the Notice to Proceed with Construction Phase activities unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the WORK by the Completion Date for each phase of the WORK and in the manner provided for by the Contract Documents shall subject CONTRACTOR to liquidated damages as hereinafter provided in this Contract. Time is and shall be of the essence in these Contract Documents.

The CITY may extend the contract time for the purposes of administrative management. Extensions in contract time shall not extend "Time of Completion" set forth above unless specifically mentioned as a modification in the "Time of Completion".

#### **5. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK**

The payment of any progress payment, or the acceptance thereof by CONTRACTOR, shall not constitute acceptance of the WORK or any portion thereof and shall in no way reduce the liability of CONTRACTOR to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made.

**6. ACCEPTANCE NOT RELEASE**

CONTRACTOR shall correct immediately any defective or imperfect work which may be discovered before final acceptance of the entire WORK. Any unsatisfactory materials shall be rejected, notwithstanding that they may have been overlooked by the inspector. The inspection of the WORK, or any part thereof, shall not relieve CONTRACTOR of any of his obligations to perform satisfactory work as herein prescribed.

Failure or neglect on the part of CITY or any of its authorized agents to condemn or reject bad or inferior work or materials shall not be construed to imply an acceptance of such work or materials if such becomes evident at any time prior to final acceptance of the entire WORK or all materials, nor shall such failure be construed as barring CITY at any subsequent time from recovering damages or of such a sum of money as may be required to build anew all portions of the WORK in which fraud was practiced or improper materials used whenever CITY may discover the same.

**7. RELEASE**

If requested to do so by CITY, at the time of final payment, as a condition precedent to final payment, CONTRACTOR and each assignee under any assignment in effect at the time of final payment shall execute and deliver a release in form and substance satisfactory to and containing such exemptions as may be found appropriate by CITY which shall discharge CITY, its officers, agents and employees of and from all liability, obligations and claims arising under this contract.

**8. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART**

The CITY shall have the right at any time to enter upon the WORK and perform work not covered by this Contract, or to occupy and use a portion of the WORK, prior to the date of the final acceptance of the WORK as a whole, without in any way relieving CONTRACTOR of any obligations under this Contract.

**9. NO WAIVER OF REMEDIES**

Neither the inspection by CITY or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the WORK by CITY, nor any extensions of time, nor any position taken by CITY or its agents shall operate as a waiver of any provision of this Contract or of any power herein reserved to CITY or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other

remedy herein provided, and CITY shall have any and all equitable and legal remedies which it would in any case have.

## **10. WARRANTY**

Except as otherwise expressly provided in the specifications, and excepting only items of routine maintenance, ordinary wear and tear, unusual abuse or neglect, or damage caused by the negligence of the CITY or its tenants, CONTRACTOR guarantees all work executed by him and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the WORK, or otherwise delivered to CITY as a part of the WORK pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire WORK by CITY. CONTRACTOR shall repair or replace any or all such work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to CITY.

In the event that the CONTRACTOR shall fail to comply with the conditions of the foregoing guarantee within five (5) days time after being notified of the defect in writing, CITY shall have the right, but shall not be obligated to repair, or obtain the repair of, the defect. If CITY elects to complete the repair CONTRACTOR shall pay CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and CONTRACTOR shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

In addition to the above, the CONTRACTOR shall make a written assignment of all manufacturer's and other product warranties to the CITY, prior to completion and final acceptance of the Work by CITY.

The CONTRACTOR's Performance Bond shall secure the performance of the CONTRACTOR's obligations under this Section 14, and the CONTRACTOR and its Surety shall be jointly and severally liable for these obligations.

## **11. LIQUIDATED DAMAGES IF WORK NOT COMPLETED ON TIME**

- (A) The actual fact of the occurrence of damages and the actual amount of the damages that CITY would suffer if the entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein are dependent upon many circumstances and conditions that could prevail in

various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that CITY would suffer in the event of such delay include: loss of the use of the project; expenses of prolonged assignment to the project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired operation of other facilities dependent upon completion of the project; and the loss and inconvenience suffered by the public within the City of Sacramento by reason of the delay in the completion of the project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, CONTRACTOR acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Contract to estimate the damages that may be incurred by CITY and the public due to the CONTRACTOR's delay in completion of the Work and/or any specified portion thereof, and shall be presumed to be the amount of damages sustained by the failure of CONTRACTOR to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

- (B) CONTRACTOR shall pay liquidated damages to CITY for failure to complete the entire Work by the Completion Date -Construction Phase (as extended in accordance with the Contract Documents, if applicable) in an amount to be determined by the CITY in accordance with Exhibit N prior to the City Council's consideration of the GMP. Liquidated damages shall be assessed for each calendar day after the Completion Date-Construction Phase (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which the entire Work is completed. Such amount is the actual cash value agreed upon by the CITY and CONTRACTOR as the loss to CITY and the public resulting from CONTRACTOR's default.

The parties agree, and by execution of this Agreement, CONTRACTOR acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date-Construction Phase (as extended in accordance with the Contract Documents, if applicable) until the date of completion of the entire Work as determined by the Engineer in accordance with Section 8-4 of the Standard Specifications, whether or not the Work or any portion thereof is claimed or determined to be substantially complete prior to such date of completion.

- (C) In the event CONTRACTOR shall become liable for liquidated damages, CITY, in addition to all other remedies provided by law, shall have the right to withhold any and all payments that otherwise would be or become due CONTRACTOR until the liability of CONTRACTOR under this section is finally determined. CITY shall have the right to use and apply such payments, in whole or in part, to reimburse CITY for all liquidated damages due or to become due to CITY. Any remaining balance of such payments shall be paid to CONTRACTOR only after discharge in full of all liability incurred by CONTRACTOR under this section or otherwise under any provision of the Contract Documents or any applicable Law or Regulation. If the sum so retained by CITY is not sufficient to discharge all such liabilities of

CONTRACTOR, CONTRACTOR shall continue to remain liable to CITY until all such liabilities are satisfied in full. No failure by CITY to withhold any payment as specified above shall in any manner be construed to constitute a release of any such liabilities nor a waiver of the CITY's right to withhold payment for such liabilities.

**12. CONTRACTOR SHALL ASSUME RISKS**

Until the completion and final acceptance by CITY of all work under this Contract, the WORK shall be under CONTRACTOR's responsible care and charge. CONTRACTOR shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the WORK, except as otherwise stipulated or caused by the negligence of the CITY or its tenants.

**13. GENERAL LIABILITY OF CONTRACTOR**

Except as otherwise herein expressly stipulated, CONTRACTOR shall perform all the work and furnish all the labor, materials, tools, power and light, and appliances, necessary or proper for performing and completing the WORK herein required in the manner within the time herein specified. The mention of any specific duty or liability of CONTRACTOR shall not be construed as limitation or restriction of any general liability or duty of CONTRACTOR and, any reference to any specific duty or liability shall be construed to be for the purpose of explanation.

**14. EXTENSIONS OF TIME**

In the event CITY deems it necessary, in its sole discretion, to extend the Time of Completion of the WORK to be done under this Contract beyond the required Completion Date herein specified, such extensions shall in no way release any guarantee given by CONTRACTOR pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the Bonds executed pursuant to said provisions. By executing such Bonds, the sureties shall be deemed to have expressly agreed to any extension of time and shall be limited to the period of excusable delay as defined herein giving rise to the same as determined by City Council of CITY.

**15. EXCUSABLE DELAYS**

For the purpose of these Contract Documents, the term "Excusable Delays" shall mean, and is limited to, delays caused directly by acts of God; acts of the public enemy; fires; inclement weather as determined by the CITY Representative; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit downs; acts of governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the work by order, decree or otherwise of the United States or by any department, bureau,

commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by CITY insofar as they necessarily require additional time in which to complete the WORK; the prevention by CITY of CONTRACTOR from commencing or prosecuting the WORK because of the acts of others, excepting CONTRACTOR's subcontractors; or the prevention of CONTRACTOR from commencing or prosecuting the WORK because of a City-wide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of CONTRACTOR; (ii) any delay in the prosecution of parts of the WORK, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other part of the WORK, nor the completion of the whole WORK within the time specified; (iii) any reasonable delay resulting from time required by CITY for review of Plans and submittals required of CONTRACTOR and for the making of surveys, measurements and inspection; (iv) any delay arising from an interruption in the prosecution of the WORK on account of the reasonable interference from other contractor's employed by CITY which does not necessarily prevent the completion of the WORK within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by CITY) but shall not under any circumstances increase the sum CITY is to pay CONTRACTOR as provided in these Contract Documents.

## **16. CONTRACTOR TO SERVE NOTICE OF DELAYS**

Whenever CONTRACTOR foresees any delay in the prosecution of the WORK, and in any event upon the occurrence of any delay which CONTRACTOR regards as an Excusable Delay, he shall notify the CITY Representative in writing immediately within ten (10) calendar days of the probability of such delay and its cause, in order that the CITY Representative may take immediate steps to prevent if possible the occurrence or continuance of the delay or if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the WORK are delayed thereby. Said notice shall constitute an application for an extension of time only if the notice requests such an extension and sets for the CONTRACTOR's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part or whole of the WORK, the CITY Representative, in estimating the amount due CONTRACTOR, will assume that any and all delays which may have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the CITY Representative at the time of their occurrence and determined by CITY Representative to have been excusable. CONTRACTOR shall make no

claim that any delay, not called to the attention of the CITY Representative in writing at the time of its occurrence, has been an Excusable Delay.

**17. EXTENSION OF TIME AND LIQUIDATED DAMAGES**

Should any delays occur which the CITY may consider excusable, as herein defined, CONTRACTOR shall, pursuant to his application, be allowed an extension of time beyond the time herein set forth proportional to said delay or delays in which to complete this Contract; and, during an extension which may have been granted because of an excusable delay or delays, CITY shall not charge liquidated damages against CONTRACTOR for such delay. Only the CITY Representative may grant an extension of time on the Contract. Extensions of time shall only be valid if issued in writing as part of a Change Order and fully executed by the CITY.

**18. EXTENSION OF TIME DOES NOT WAIVE CITY'S RIGHT**

The granting of any extension of time on account of delays which in the judgment of the CITY Representative are excusable delays shall in no way operate as a waiver on the part of CITY of its rights under this Contract excepting only extension of the Completion Date.

**19. NO PAYMENT FOR DELAYS**

No damages or compensation of any kind shall be paid to CONTRACTOR or any subcontractor because of delays in the progress of the WORK whether such delays qualify for extension of time under this Contract; except that this provision shall not preclude the recovery of damages for a delay caused by the wrongful acts or omissions of the CITY, or issuance of a change order or directions by CITY to suspend the Work not attributable to the negligence or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor and which delay is unreasonable under the circumstances involved and not within the contemplation of the CITY and CONTRACTOR consistent with Section 7102 of the Public Contracts Code, provided that CONTRACTOR timely submits all such written notice(s) and fully complies with such other procedures as may be specified in the Contract Documents or any laws or regulations for Contractor to claim damages for such delay.

**20. CHANGES IN THE WORK**

Changes in the WORK made pursuant to changes issued in accordance with this contract and extensions of time of completion made necessary by reason thereof (beyond the Completion Date) shall not in any way release any guarantee given by CONTRACTOR pursuant to the provisions of the Contract Documents, or the

Contract let hereunder, nor shall such changes in the WORK relieve or release the sureties on Bonds executed pursuant to the said provisions. By executing such Bonds, the sureties shall be deemed to have expressly agreed to any such change in WORK and to any extension of time made by reason thereof.

## **21. ACCOUNTING RECORDS OF CONTRACTOR**

During performance of the Contract and for a period of three (3) years after completing the entire Work, CONTRACTOR shall maintain all accounting and financial records related to the Contract and performance of the Work in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

## **22. USE TAX REQUIREMENTS**

During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

(A) Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the CONTRACTOR and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

(B) Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, CONTRACTOR and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the CITY. CONTRACTOR and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the CITY.

(C) The above provisions shall apply in all instances unless prohibited by the funding source for the Contract.

## **23. INDEPENDENT CONTRACTOR**

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees

of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Contract, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance of any Work or services under this Contract.

- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed, scheduling when work may be completed or prohibited and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Contract, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Contract.
- C. If, in the performance of this Contract, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section shall survive any expiration or termination of this Contract. Nothing in this Contract shall be construed to create an exclusive relationship between CITY and CONTRACTOR.

**24. LICENSES; PERMITS, ETC.**

CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals

of whatsoever nature legally required for CONTRACTOR to practice its profession or provide any Work or services under the Contract. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Work or services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

**25. TIME**

CONTRACTOR shall devote such time and effort to the performance of Work pursuant to this Contract as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Contract. Neither party shall be considered in default of this Contract, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

**26. CONTRACTOR NOT AGENT**

Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

**27. CONFLICTS OF INTEREST**

CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Work under this Contract. CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Contract. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento Municipal Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

**28. CONFIDENTIALITY OF CITY INFORMATION**

During performance of this Contract, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section shall be a material violation of this Contract and shall justify legal and/or equitable relief.

## **29. CONTRACTOR INFORMATION**

- A. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Contract.
  
- B. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Work performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.

- C. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

### **30. STANDARD OF PERFORMANCE**

CONTRACTOR shall perform all Work required pursuant to this Contract in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Contract shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in the Contract Documents. CONTRACTOR shall assign only competent personnel to perform Work pursuant to this Contract. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Work required under this Contract, prior to any such performance. In the event that CITY, at any time during the term of this Contract, desires the removal of any person assigned by CONTRACTOR to perform Work pursuant to this Contract, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

### **31. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. **Compliance With Regulations:** CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. **Nondiscrimination:** CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of

materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Contract, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Contract until CONTRACTOR complies;
  - (2) Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

## SPECIAL CONDITIONS

### 1.00 SPECIAL CONDITIONS

#### 1.01 Mutual Obligations

CITY and CONTRACTOR commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### 1.02 Basic Definitions

- A. **Contract** shall mean the executed contract between CITY and CONTRACTOR.
- B. **Day or Days** shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- C. **Designer** shall mean a qualified, licensed design professional who is not an employee of CONTRACTOR, but is retained by CONTRACTOR, or employed or retained by anyone under contract with CONTRACTOR or Subcontractor, to furnish design services required under the Contract Documents.
- D. **Hazardous Materials** shall mean any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- E. **Special Conditions of Contract** shall mean Exhibit B to this contract.
- F. **Legal Requirements** shall mean all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any WORK.
- G. **Site** shall mean the project as defined by the following assessors parcel number(s) 002-0010-044 and 006-0023-002.
- H. **Subcontractor** shall mean any person or entity retained by CONTRACTOR as an independent contractor to perform a portion of the WORK and shall include material, workers and suppliers.
- J. **Sub-Subcontractor** shall mean any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's work and shall include material, workers and suppliers.
- K. **WORK** shall mean all efforts associated with CONTRACTOR's design review and coordination, construction and other services required by the Contract Documents,

including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

L. **Substantially Complete** as applied to the WORK shall mean that the CITY Representative has determined that all of the WORK has been performed, but there are minor deficiencies, as determined by the CITY Representative, that do not prevent the WORK from being fully functional nor pose any risk to the public health, safety or welfare or public or private property, as determined by the CITY Representative. The WORK shall be considered substantially complete on the date that the CITY Representative accepts a final punchlist prepared by CONTRACTOR in writing and the CITY's Representative issues a Notice of Substantial Completion.

M. **LEED** shall mean "Leadership in Energy and Environmental Design" as established by the U.S. Green Building Council.

N. **Fully Executed** shall mean the final completion of any document requiring endorsements and signatures. A document is not fully executed until all required signatures have been secured and the document has been issued to the CONTRACTOR by CITY.

O. **Engineer** shall mean the CITY's Representative.

P. **Testing Authority** shall mean the individual in charge of organizing, conducting, paying for all testing and documentation, administering tests, documenting all test results and compiling a formal Acceptance Testing Report required under Title 24. For the purposes of this contract the CONTRACTOR shall be the Testing Authority.

Q. All terms not defined above shall have the meanings specified in Section 1 of the Standard Specifications, which is incorporated herein by this reference.

## 2.00 CONTRACTOR'S SERVICES AND RESPONSIBILITIES

### 2.01 General Services

A. CONTRACTOR's Representative shall be reasonably available to CITY and shall have the necessary expertise and experience required to supervise the WORK. CONTRACTOR's Representative shall communicate regularly with CITY and shall be vested with the authority to act on behalf of CONTRACTOR. CONTRACTOR's Representative may be replaced if requested by CITY.

B. CONTRACTOR shall provide CITY with a monthly status report by the fifteenth day of the following month as determined and adjusted by the City's representative. Status reports shall detail the progress of the WORK, including whether (i) the WORK is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the WORK, (iv) status of Submittals, Requests for Information (RFI), Correction Notices, LEED Compliance, etc. and (iv) other items require resolution so as

not to jeopardize CONTRACTOR's ability to complete the WORK for the Contract Price and within the Contract Time(s).

C. CONTRACTOR shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.01.D hereof, a schedule for the execution of the WORK for CITY's review and response. The schedule shall indicate the dates for the start and completion of the various portions of WORK, including the dates when CITY information and approvals are required to enable CONTRACTOR to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the WORK, but such revisions shall not relieve CONTRACTOR of its obligations to complete the WORK within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. CITY's review of and response to the schedule shall not be construed as relieving CONTRACTOR of its complete and exclusive control over the means, methods, sequences and techniques for executing the WORK.

D. Within 30 days prior to the City's acceptance of the GMP, the City and CONTRACTOR will meet to discuss issues affecting the administration of the WORK and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

E. CONTRACTOR assumes responsibility for protection, security and control of all facilities, structures and equipment within the areas of construction, including but not limited to the Intermodal Phase 2 – Sacramento Valley Station building site, adjacent parking lot and site property for the full duration of the project, except those areas where the Work has been completed and occupied by the City and the tenants of the City and a Certificate of Occupancy has been approved.

F. CONTRACTOR assumes responsibility for paying for all electrical costs above the baseline usage of 4189 KWH related to the execution of the WORK through issuance of the Notice of Completion.

G. CONTRACTOR shall support and maintain all temporary services including, but not limited to security, access control, water, sewer telephone, trash removal and other related utilities and services.

H. CONTRACTOR shall provide separate sanitary facilities for use by all personnel on the site through issuance of the final Notice of Completion. Sanitary facilities provided within the project and existing sanitary facilities in or around the site shall not be used by CONTRACTOR or any workers employed directly or indirectly by CONTRACTOR.

## **2.02 Professional Services**

The CONTRACTOR shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are

specifically required by the Contract Documents for a portion of the Work, and unless the CONTRACTOR has specifically agreed in writing to provide such services, or unless such services are incidental to CONTRACTOR's development of submittals or shop drawings or the means and methods to be used by CONTRACTOR, its subcontractors, or material suppliers. In such event, the CONTRACTOR shall cause such services to be performed by appropriately licensed professionals, who shall be required to carry professional liability (errors and omissions) insurance for a minimum amount of \$2,000,000 combined single limit per occurrence at all times during the performance of such services and for a minimum period of 2 years after CITY accepts the Project as complete. Such insurance coverage shall be provided by a company or companies admitted to transact insurance in the State of California, and CONTRACTOR shall furnish CITY with certificates of insurance evidencing such coverage. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the CONTRACTOR by the Contract Documents, the CONTRACTOR shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval. The CITY shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### **2.03 Standard of Care for Design Professional Services**

The standard of care for all design professional services performed to execute the WORK shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

### **2.04 Design Support Services**

A. CONTRACTOR and CITY shall, consistent with any applicable provision of the Contract Documents, agree upon any interim submissions that CITY may wish to review during development and evaluation of the design, such interim submissions may include constructability reviews, value engineering, alternative construction options, cost estimates, availability of materials and workers, scheduling, and similar services necessary to assist the City in establishing the project design, scope, quality and schedule. Minutes of the meetings will be maintained by CITY and provided to all attendees for review.

B. CONTRACTOR shall submit to CITY reviews, estimates, schedules and recommendations based on design documents prepared by CITY's design consultants at 60%, 90% and 100% document completion. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.

**2.05 Legal Requirements**

A. CONTRACTOR shall perform the WORK in accordance with all Legal Requirements presented in the General Conditions of the Contract and shall provide all notices applicable to the WORK as required by the Legal Requirements.

B. The Contract Price and/or Contract Time(s) shall be adjusted to compensate CONTRACTOR for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the WORK, or if a Guaranteed Maximum Price is established after the date the City issues the Notice to Proceed with the Construction Phase. Such effects may include, without limitation, revisions CONTRACTOR is required to make to the Construction because of changes in Legal Requirements that could not have been known before City acceptance of the GMP.

**2.06 Government Approvals and Permits**

A. Except as noted in "Cost of the WORK" CONTRACTOR shall obtain and pay for all necessary permits, approvals, fees, licenses, government charges and inspection charges required for the prosecution of the WORK by any agency or entity having jurisdiction over the Project.

B. CONTRACTOR shall provide reasonable assistance to CITY in obtaining those permits, approvals and licenses that are CITY's responsibility.

**2.07 CONTRACTOR's Construction Phase Services**

A. Unless otherwise provided in the Contract Documents to be the responsibility of CITY or a separate contractor, CONTRACTOR shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CONTRACTOR to complete construction of the Project consistent with the Contract Documents.

B. CONTRACTOR shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CONTRACTOR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. CONTRACTOR shall employ only Subcontractors who are duly licensed and qualified to perform the WORK consistent with the Contract Documents. CITY may reasonably object to CONTRACTOR's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that CITY's decision impacts CONTRACTOR's overall project cost and/or time of performance. CONTRACTOR shall employ a competitive selection process consistent with the TIGER Discretionary Grants Funding Agreement when subcontracting work and procuring supplies, but in no event shall solicit less than three bids for all work and supplies.

D. CONTRACTOR assumes responsibility to CITY for the proper performance of the WORK of Subcontractors and any acts and omissions in connection with such

performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between CITY and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

E. CONTRACTOR shall coordinate the activities of all Subcontractors. If CITY performs other work on the Project or at the Site with separate contractors under CITY's control, CONTRACTOR agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

F. CONTRACTOR shall keep the Site reasonably free from debris, trash and construction wastes to permit CONTRACTOR to perform construction services efficiently, safely and without interfering with the use of adjacent land areas, and as further stipulated in the contract documents. Upon Substantial Completion of the WORK, or a portion of the WORK, CONTRACTOR shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the WORK or applicable portions thereof to permit CITY to occupy the Project or a portion of the Project for its intended use. CONTRACTOR shall provide a finished cleaning of all areas acceptable to the CITY before releasing any area to the CITY for occupancy.

#### **2.08 CONTRACTOR's Responsibility for Project Safety**

A. CONTRACTOR recognizes the importance of performing the WORK in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the WORK, including materials and equipment incorporated into the WORK or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. CONTRACTOR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the WORK. CONTRACTOR shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the WORK. Unless otherwise required by the Contract Documents, CONTRACTOR's Safety Representative shall be an individual stationed at the Site, during all construction related activities. The Safety Representative shall make routine daily inspections of the Site, shall document inspections in a daily log (including photographs), and shall hold weekly safety meetings with CONTRACTOR's personnel, Subcontractors and others as applicable.

B. CONTRACTOR and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any CITY-specific safety requirements set forth in the Contract Documents, provided that such CITY-specific requirements do not violate any applicable Legal Requirement. CONTRACTOR shall immediately report in writing to CITY any safety-related injury, loss, damage, or accident arising from the WORK and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the WORK.

C. CONTRACTOR's responsibility for safety under this Section 2.08 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the WORK.

D. CITY shall require all CITY employees, its subcontractors, employees, agents and guests entering the construction site to comply with and obey all CONTRACTOR site rules and safety regulations including attendance at a project specific orientation.

### **2.09 CONTRACTOR's Warranty**

CONTRACTOR warrants to CITY that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. CONTRACTOR's warranty obligation excludes defects caused by abuse, unauthorized alterations, or failure to maintain the WORK by persons other than CONTRACTOR or anyone for whose acts CONTRACTOR may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides CITY with greater warranty rights than set forth in this Section 2.09 or the Contract Documents. CONTRACTOR shall provide CITY with all manufacturers' warranties prior to submitting a request for Substantial Completion.

## **3.00 CITY'S SERVICES AND RESPONSIBILITIES**

### **3.01 CITY's Separate Contractors**

CITY is responsible for all work performed on the Project or at the Site by separate contractors under CITY's control. CITY shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CONTRACTOR in order to enable CONTRACTOR to maintain timely completion of the WORK consistent with the Contract Documents.

## **4.00 HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS**

### **4.01 Hazardous Conditions**

A. Unless otherwise expressly provided in the Contract Documents to not be part of the WORK, CONTRACTOR is responsible for all Hazardous Conditions encountered at the Site that have been identified in the report titled, "Pre-Renovation Hazardous Materials Investigation Sacramento Valley Depot, 401 I Street, Sacramento, California, Enercon Project Number ENMISC 2236" dated March 2, 2011, as it may be amended from time to time, the Hazardous Conditions identified in the Geophysical Survey and Geoprobe Assessment to be provided by the CITY for the areas referenced in Exhibit O (as it may be amended from time to time), as well as all Hazardous Conditions that are the direct or indirect result of work completed by the CONTRACTOR. Upon

encountering any previously un-identified Hazardous Conditions, CONTRACTOR shall notify CITY and take steps necessary to protect the WORK and continue working in unaffected areas of the project site.

B. Upon receiving notice of the presence of suspected Hazardous Conditions that were not previously identified in the Pre-Renovation Hazardous Materials Investigation report and Geophysical Survey and Geoprobe Assessment, as those reports may be amended from time to time, the CITY shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include CITY retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that CITY or CONTRACTOR must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

C. CONTRACTOR shall be obligated to resume work at the affected area of the Project only after CITY's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

D. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless CONTRACTOR, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site provided the hazardous condition is not the result directly or indirectly of actions taken by the CONTRACTOR or previously included in the Pre-Renovation Hazardous Materials Investigation and Geophysical Survey and Geoprobe Assessment, as they may be amended from time to time.

F. Notwithstanding the preceding provisions, CITY is not responsible for Hazardous Conditions introduced to the Site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable. CONTRACTOR shall indemnify, defend and hold harmless CITY and CITY's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable.

#### **4.02 Differing Site Conditions**

A. Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the WORK are collectively referred to herein as "Differing Site Conditions."

B. Upon encountering a Differing Site Condition, CONTRACTOR shall provide prompt written notice to CITY of such condition, which notice shall not be later than four (4) calendar days after such condition has been encountered. CONTRACTOR shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **5.00 TIME**

### **5.01 Obligation to Achieve the Contract Times**

CONTRACTOR agrees that it shall commence performance of the WORK and achieve the Contract Time(s) in accordance with the General Conditions presented in Exhibit A.

## **6.00 CHANGES TO THE CONTRACT PRICE AND TIME**

### **6.01 Change Orders**

A. A Change Order is a written instrument issued after execution of the Contract signed by CITY and CONTRACTOR, stating their agreement upon all of the following:

1. The scope of the change in the WORK; and/or
2. The amount of the adjustment to the Contract Price; and/or
3. The extent of the adjustment to the Contract Time(s).

B. All changes in the WORK authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. CITY and CONTRACTOR shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

C. If CITY requests a proposal for a change in the WORK from CONTRACTOR and subsequently elects not to proceed with the change, a Change Order shall not be issued to reimburse CONTRACTOR for costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

D. CONTRACTOR shall not list Change Orders on invoices or pay requests until the Change Order is fully executed.

### **6.02 WORK Change Directives**

A. A WORK Change Directive is a written order prepared and signed by CITY, directing a change in the WORK prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

~~B. CITY and CONTRACTOR shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the WORK Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.~~

**6.03 Minor Changes in the WORK**

Minor changes in the WORK do not involve an adjustment in the Contract Price and/or Contract Time(s) and that do not materially and adversely affect the WORK in the judgment of the CITY. CONTRACTOR may make minor changes in the WORK consistent with the intent of the Contract Documents, provided, however that CONTRACTOR shall promptly inform CITY in writing before any minor change is implemented, and receive written confirmation from CITY accepting the minor change in the WORK.

**6.04 Emergencies**

In any emergency affecting the safety of persons and/or property, CONTRACTOR shall act, at its discretion, to prevent threatened damage, injury or loss, but shall take steps to immediately notify CITY of the emergency and submit a written notification to the CITY within 24 hours of taking any emergency action.

**7.00 CONTRACT ADJUSTMENTS AND DISPUTES**

**7.01 Duty to Continue Performance**

Unless provided to the contrary in the Contract Documents, CONTRACTOR shall continue to perform the WORK and CITY shall continue to satisfy its payment obligations to CONTRACTOR, pending the final resolution of any dispute or disagreement between CONTRACTOR and CITY.

**7.02 Consequential Damages**

A. Notwithstanding anything herein to the contrary, neither CONTRACTOR nor CITY shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing, excluding Liquidated Damages established in this contract.

**8.00 CONTRACTOR'S RIGHT TO STOP WORK**

CONTRACTOR shall not stop work unless directed to do so by CITY, or under "Emergency" conditions as set forth in this contract.

**9.00 MISCELLANEOUS**

**9.01 Assignment**

Neither CONTRACTOR nor CITY shall, without the written consent of the other assign, transfer or sublet any portion or part of the WORK or the obligations required by the Contract Documents

**9.02 Successorship**

CONTRACTOR and CITY intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**9.03 Governing Law**

The Contract and all Contract Documents shall be governed by the laws of the State of California, without giving effect to its conflict of law principles.

**9.04 Severability**

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**9.05 No Waiver**

The failure of either CONTRACTOR or CITY to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**9.06 Headings**

The headings used in these Special Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**9.07 Notice**

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

**9.08 Amendments**

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY**

CITY shall not furnish any facilities or equipment for Pre-Construction Phase activities of this Contract, but CITY will grant CONTRACTOR access to 401 I Street for the purpose of completing work in the approved Contract Documents during Construction Phase activities. CONTRACTOR shall coordinate with CITY to establish mutually acceptable access to the facilities listed above.

# REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

## INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

## APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a CONTRACTOR and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

## DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

#### **CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

#### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

## Attachment A



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- |   |   |                                       |
|---|---|---------------------------------------|
| - Bereavement leave                             | - | Moving expenses                       |
| - Disability, life and other types of insurance |   | - Pension and retirement benefits     |
| - Family medical leave                          |   | Vacation                              |
| - Health benefits                               | - | - Travel benefits                     |
| - Membership or membership discounts            |   | Any other benefits given to employees |
| -   |   |                                       |

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

#### **You May ...**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Contract Services Unit  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814-2714

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
  - Reinstatement, injunctive relief, compensatory damages and punitive damages
  - Reasonable attorney's fees and costs

## Attachment B



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

#### **You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Contract Services Unit  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814-2714
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

#### **Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

#### **You May Also . . .**

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of CONTRACTOR: **Rudolph & Sletten, Inc.**  
Address: **1504 Eureka Rd, Suite 200, Roseville CA 95661**

The above named CONTRACTOR ("CONTRACTOR") hereby declares and agrees as follows:

1. CONTRACTOR has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit D.
2. As a condition of receiving this Contract, CONTRACTOR agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the Ordinance).
3. CONTRACTOR understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
  - a. Bereavement Leave
  - b. Disability, life, and other types of insurance
  - c. Family medical leave
  - d. Health benefits
  - e. Membership or membership discounts
  - f. Moving expenses
  - g. Pension and retirement benefits
  - h. Vacation
  - i. Travel benefits
  - j. Any other benefit offered to employees

CONTRACTOR agrees that if CONTRACTOR offers any of the above-listed employee benefits, CONTRACTOR will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. CONTRACTOR understands that CONTRACTOR will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, CONTRACTOR will not be required to provide the benefit, nor shall it be deemed discriminatory, if CONTRACTOR requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
  - b. If CONTRACTOR is unable to provide a certain benefit, despite taking reasonable measures to do so, if CONTRACTOR provides the employee with a cash equivalent CONTRACTOR will not be deemed to be discriminating in the application of that benefit.
  - c. If CONTRACTOR provides employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If CONTRACTOR provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
  - e. If CONTRACTOR submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). CONTRACTOR understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
  - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
  - h. CONTRACTOR takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for CONTRACTOR to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
  - i. In the event CONTRACTOR cannot end discrimination in employee benefits despite taking all reasonable measures to do so, CONTRACTOR provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, CONTRACTOR understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. CONTRACTOR understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject CONTRACTOR to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
  6. CONTRACTOR understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. CONTRACTOR further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. CONTRACTOR also agrees to prominently display a poster informing each employee of these rights.
  7. CONTRACTOR understands that CONTRACTOR has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
  8. CONTRACTOR agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by CONTRACTOR.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the CONTRACTOR to the provisions of this Declaration.



\_\_\_\_\_  
Signature of Authorized Representative

6.17.13

\_\_\_\_\_  
Date

Martin Sisemore – President & CEO

Print Name

\_\_\_\_\_

**REQUIRED CONTRACT FORMS**

**BID FORMS – Exhibit E**

- Drug Free Workplace Policy and Affidavit
- List of Subcontractors
- Non-Discrimination in Employee Benefits Ordinance Certification
- Minimum Qualifications Questionnaire
- Equal Employment Opportunity Certification
- Public Contract Code Section 10285.1 Statement
- Public Contract Code Section 10162 Questionnaire
- Public Contract Code Section 10232 Statement
- Non Collusion Affidavit
- Debarment and Suspension Certification
- Nonlobbying Certification for Federal-Aid Contracts
- Disclosure of Lobbying Activities Form and Instructions
- Local Agency Bidder - DBE Commitment (Exhibit 15-G(1))
- DBE Information – Good Faith Efforts (Exhibit 15-H)
- Local Agency Bidder - DBE Information (Exhibit 15-G(2))
- Excerpts from the California Labor Code Relating to Apprentices on Public Works
- Duns Form
- Title VI Language
- Bidders List (Exhibit 12-G, Part I & II)
- Performance Bond
- Payment Bond
- Worker's Compensation Certification
- Construction & Demolition Debris Recycling Requirements
- Pay Request Application
- Schedule of Values
- Guarantee

**DATA UNIVERSAL NUMBERING SYSTEM (D-U-N-S) NUMBER**

For the purpose of complying with the American Recovery and Reinvestment Act of 2009, the successful bidder must provide the Agency a D-U-N-S number.

Complete and sign the Data Universal Numbering System (D-U-N-S) Number form included in the contract documents.

This form must be submitted with the executed contract.

If your company does not have a D-U-N-S number, you can obtain one by contacting Dun & Bradstreet at:

<http://dnb.com/us/>

If you fail to submit this information with the executed contract, the City of Sacramento will not approve the contract.

**DRUG-FREE WORKPLACE POLICY AND AFFIDAVIT**

**BID PROPOSAL MAY BE DECLARED NONRESPONSIVE IF THIS FORM (COMPLETED) IS NOT ATTACHED.  
Pursuant to City Council Resolution CC90-498 dated 6/26/90 the following is required.**

The undersigned contractor certifies that it and all subcontractors performing under this Agreement will provide a drug-free workplace by:

1. Publishing a "Drug-Free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establishing a Drug-Free Awareness Program to inform employees about:
  - a. The dangers of drug abuse in the workplace.
  - b. The contractor's policy of maintaining a drug-free workplace.
  - c. Any available drug counseling, rehabilitation, and employee assistance program.
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Notify employees that as a condition of employment under this Agreement, employees will be expected to:
  - a. Abide by the terms of the statement.
  - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace.
4. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy on the "Drug-Free Workplace" statement.
5. Taking one of the following appropriate actions, within thirty (30) days of receiving notice from an employee or otherwise receiving such notice, that said employee has received a drug conviction for a violation occurring in the workplace:
  - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

\* I certify that no person employed by this company, corporation, or business has been convicted of any criminal drug statute violation on any job site or project where this company, corporation or business was performing was within three years of the date of my signature below.

**EXCEPTION:**

Date	Violation Type	Place of Occurrence
------	----------------	---------------------

If additional space is required use back of this form.

\* The above statement will also be incorporated as a part of each subcontract agreement for any and all subcontractors selected for performance on this project.

IN THE EVENT THIS COMPANY, CORPORATION, OR BUSINESS IS AWARDED THIS CONSTRUCTION AGREEMENT, AS A RESULT OF THIS BID; THE CONTRACTOR WITH HIS/HER SIGNATURE REPRESENTS TO THE CITY THAT THE INFORMATION DISCLOSED IN THIS DOCUMENT IS COMPLETE AND ACCURATE. IT IS UNDERSTOOD AND AGREED THAT FALSE CERTIFICATION IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY.

The Representations Made Herein On This Document Are Made Under Penalty Of Perjury.

CONTRACTOR'S NAME: BRIDGEMOUTH AND STETSON, INC.

BY: [Signature] Title: PRESIDENT Date: 6.17.13

Effects of violations: a. Suspension of payments under the Agreement. b. Suspension or termination of the Agreement. c. Suspension or debarment of the contractor from receiving any Agreement from the City of Sacramento for a period not to exceed five years.



## **REQUIREMENTS FOR THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE**

### **INTRODUCTION**

The Sacramento Non-Discrimination In Employee Benefits By City Contractors Ordinance (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

### **APPLICATION**

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed. The provisions apply only to those employee(s) actually working on the City contract and only for the actual amount of time the employee(s) spend working on such contract.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

### **DEFINITIONS**

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

### **CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form (attachment "A"), signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as attachment "B."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as attachment "C."

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

RUDOLPH AND SLETTER, INC.  
Name of Contractor

1600 SEADOG BLVD, SUITE 350, REDWOOD CITY, CA 94063  
Address

The above named contractor ("Contractor") hereby declares and agrees as follows:

1. I have read and understand the Non-Discrimination In Employee Benefits By City Contractors Ordinance ("Ordinance") provided to me by the City of Sacramento ("City") in connection with the City's request for proposals or other solicitations for the performance of services, or for the provision of commodities, under a City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the requirements of the Ordinance, codified as Chapter 3. 54 of the Sacramento City Code.
3. If the face amount of this City Contract is less than \$25,000, as a condition of receiving this Contract, I agree to notify the City in writing if the aggregate value of the City Contract referenced herein, after changes, modifications, or similar actions, equals or exceeds \$25,000 in total value.
4. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
  - a. Bereavement Leave
  - b. Disability, life, and other types of insurance
  - c. Family medical leave
  - d. Health benefits
  - e. Membership or membership discounts
  - f. Moving expenses
  - g. Pension and retirement benefits
  - h. Vacation
  - i. Travel benefits
  - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

5. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

- a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
- b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
- c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
- d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.
- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits  
  
The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.
- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).
- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

6. I understand that failure to comply with the provisions of Section 5. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
7. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.
8. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one contractor is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the EBO requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the City's Equal Benefits Requirements or of the Ordinance by me.

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.



\_\_\_\_\_  
Signature of Authorized Representative

6.17.13

\_\_\_\_\_  
Date

MARTIN SKEMORE

\_\_\_\_\_  
Print Name

PRESIDENT

\_\_\_\_\_  
Title



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S  
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS  
ORDINANCE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits By City Contractors Ordinance (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Contract Services Unit  
5730 24<sup>th</sup> St, Bldg 1  
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

- Reinstatement, injunctive relief, compensatory damages and punitive damages
- Reasonable attorney's fees and costs



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S  
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS  
ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

**You May . . .**

- o Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Contract Services Unit  
5730 24<sup>TH</sup> St, Bldg 1  
Sacramento, CA 95822
- o Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

**Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

**You May Also . . .**

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

## MINIMUM QUALIFICATIONS QUESTIONNAIRE

Sacramento City Code Section 3.60.020 authorizes the Sacramento City Council to adopt standard minimum qualifications for bidders on competitively bid public works construction projects, and requires, among other provisions, that a bidder meet such minimum qualifications at the time of bid opening in order to bid. On July 31, 2007, the City Council adopted Resolution No. 2007-574 establishing these standard minimum qualifications. Pursuant to City Code section 3.60.020, a bidder failing to meet these minimum qualifications at the time of bid opening shall not be considered a responsible bidder for purposes of bidding on the subject project.

All bidders must demonstrate compliance with the minimum qualifications established by Resolution No. 2007-574 by completing all of the questions contained in this questionnaire. Bidder responses shall be limited to those operating business units, offices, branches and/or subsidiary divisions of the bidder that will be involved with the performance of any project work if awarded the contract. If a bidder answers "yes" to any single question, fails to submit a fully completed questionnaire, or submits false information, this will result in a determination that the minimum qualifications are not met, and the bidder shall not be considered a qualified bidder for purposes of bidding on this contract. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet these minimum qualifications for the Joint Venture to be considered a qualified bidder.

The City of Sacramento ("City") shall make its determination on the basis of the submitted questionnaire, as well as any relevant information that is obtained from others or as a result of investigation by the City. While it is the intent of this questionnaire to assist the City in determining whether bidders possess the minimum qualifications necessary to submit bids on the City's competitively bid public works construction contracts, the fact that a bidder submits a questionnaire demonstrating that it meets these minimum qualifications shall not in any way limit or affect the City's ability to: (1) review other information contained in the bid submitted by the bidder, and additional relevant information, and determine whether the contractor is a responsive and/or responsible bidder; or (2) establish pre-qualification requirements for a specific contract or contracts.

By submitting this questionnaire, the bidder consents to the disclosure of its questionnaire answers: (i) to third parties for purposes of verification and investigation; (ii) in connection with any protest, challenge or appeal of any action taken by the City; and (iii) as required by any law or regulation, including without limitation the California Public Records Act (Calif. Gov't Code sections 6250 et seq.). Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the bidder submitting the questionnaire. If any information provided by a bidder becomes inaccurate, the bidder shall immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

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### FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2007-574

DATE ADOPTED: July 31, 2007

**QUESTIONNAIRE**

**NOTICE:** For firms that maintain other operating business units, offices, branches and/or subsidiary divisions that will not be involved with the performance of any project work if the firm is awarded the contract, references hereafter to "your firm" shall mean only those operating business units, offices, branches and/or subsidiary divisions that will be involved with the performance of any project work.

All of the following questions regarding "your firm" refer to the firm (corporation, partnership or sole proprietor) submitting this questionnaire, as well as any firm(s) with which any of your firm's owners, officers, or partners are or have been associated as an owner, officer, partner or similar position within the last five years

The firm submitting this questionnaire shall not be considered a responsible bidder if the answer to any of these questions is "yes", or if the firm submits a questionnaire that is not fully completed or contains false information.

1. **Classification & Expiration Date(s) of California Contractor's License Number(s) held by firm:**

\_\_\_\_\_

2. Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?

Yes                       No

3. Within the last five years, has a surety firm completed a contract on your firm's behalf, or paid for completion of a contract to which your firm was a party, because your firm was considered to be in default or was terminated for cause by the project owner?

Yes                       No

4. At the time of submitting this minimum qualifications questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either California Labor Code section 1777.1 (prevailing wage violations) or Labor Code section 1777.7 (apprenticeship violations)?

Yes                       No

5. At any time during the last five years, has your firm, or any of its owners, officers or partners been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?

Yes                       No

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2007-574

DATE ADOPTED: July 31, 2007

6. Answer either subsection A or B, as applicable:

A. Your firm has completed three or more government construction contracts in Sacramento County within the last five years: Within those five years, has your firm been assessed liquidated damages on three or more government construction contracts in Sacramento County for failure to complete contract work on time?

**NOTE: If there is a pending administrative or court action challenging the assessment of liquidated damages on a government contract within the last five years, you need not include that contract in responding to this question.**

Yes

No

Not applicable

**OR**

B. Your firm has not completed at least three government construction contracts in Sacramento County within the last five years: Within the last three years, has your firm been assessed liquidated damages on three or more government construction contracts for failure to complete contract work on time?

**NOTE: If there is a pending administrative or court action challenging an assessment of liquidated damages on a government contract within the last three years, you need not include that contract in responding to this question.**

Yes

No

Not applicable

7. In the last three years has your firm been debarred from bidding on, or completing, any government agency or public works construction contract for any reason?

**NOTE: If there is a pending administrative or court action challenging a debarment, you need not include that debarment in responding to this question.**

Yes

No

8. Has CAL OSHA assessed a total of three or more penalties against your firm for any "serious" or "willful" violation occurring on construction projects performed in Sacramento County at any time within the last three years?

**NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.**

Yes

No

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2007-574

DATE ADOPTED: July 31, 2007

9. Answer either subsection A or B, as preferred:

A. In the last three years has your firm had a three year average Workers' Compensation experience modification rate exceeding 1.1?

Yes  No

**OR**

B. In the last three years has your firm had a three-year average incident rate for total lost workday cases exceeding 10?

**NOTE:** Incident rates represent the number of lost workday cases per 100 full-time workers and is to be calculated as:  $(N/EH) \times 200,000$ , where

**N** = number of lost workday cases (as defined by the U.S. Dept. of Labor, Bureau of Labor Statistics)  
**EH** = total hours worked by all employees during the calendar year  
**200,000** = base for 100 equivalent full-time working (working 40 hours per week, 50 weeks per year)

Yes  No

10. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed penalties three or more times, either against your firm, or against the project owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was a contractor in Sacramento County?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2007-574

DATE ADOPTED: July 31, 2007

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against the project owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor in Sacramento County?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

**NOTE:** If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

Yes  No

14. Has your firm been assessed penalties for violation of public works prevailing wage requirements in California, in an aggregate amount for the past three years of \$50,000 or more?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2007-574

DATE ADOPTED: July 31, 2007

**VERIFICATION AND SIGNATURE**

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at REDWOOD CITY \_\_\_\_\_, on 6.17.13 \_\_\_\_\_  
(Location) (Date)

Signature: 

Print name: MOZIO SKEMPERE

Title: PRESIDENT

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2007-574

DATE ADOPTED: July 31, 2007

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder \_\_\_\_\_, proposed subcontractor \_\_\_\_\_, hereby certifies that he has \_\_\_\_\_, has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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## PUBLIC CONTRACT CODE

### Public Contract Code Section 10285.1 Statement

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has \_\_\_\_, has not  been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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### Public Contract Code Section 10162 Questionnaire

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes \_\_\_\_ No

If the answer is yes, explain the circumstances in the following space.

## **Public Contract Code 10232 Statement**

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.  
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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**Noncollusion Affidavit**

(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY / COUNTY of \_\_\_\_\_  
*DEPARTMENT OF PUBLIC WORKS.*

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.  
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

\_\_\_\_\_

## **DEBARMENT AND SUSPENSION CERTIFICATION**

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

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

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

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

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.  
The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

---

## **NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**DISCLOSURE OF LOBBYING ACTIVITIES**

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

**2. Status of Federal Action:**

- a. bid/offer/application
- b. initial award
- c. post-award

**3. Report Type:**

- a. initial
- b. material change

**For Material Change Only:**

year \_\_\_\_\_ quarter \_\_\_\_\_  
date of last report \_\_\_\_\_

**4. Name and Address of Reporting Entity**

- Prime
- Subawardee  
Tier \_\_\_\_\_, if known

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

Congressional District, if known

Congressional District, if known

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, if applicable \_\_\_\_\_

**8. Federal Action Number, if known:**

**9. Award Amount, if known:**

**10. a. Name and Address of Lobby Entity**  
(If individual, last name, first name, MI)

**b. Individuals Performing Services** (including address if different from No. 10a)  
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

**11. Amount of Payment (check all that apply)**

\$ \_\_\_\_\_  actual  planned

**13. Type of Payment (check all that apply)**

- a. retainer
- b. one-time fee
- c. commission
- d. contingent fee
- e. deferred
- f. other, specify \_\_\_\_\_

**12. Form of Payment (check all that apply):**

- a. cash
- b. in-kind; specify: nature \_\_\_\_\_  
value \_\_\_\_\_

**14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:**

*NOT APPLICABLE*

(attach Continuation Sheet(s) if necessary)

**15. Continuation Sheet(s) attached:** Yes  No

**16.** Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: *[Signature]*  
Print Name: KEVIN ENGLUND  
Title: SR. PROJECT EXECUTIVE  
Telephone No.: 916-257-4927 Date: 6/18/13

Authorized for Local Reproduction  
Standard Form - LLL

**Federal Use Only:**

Standard Form LLL Rev. 09-12-97

**INSTRUCTIONS FOR COMPLETION OF SF-LLL,  
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.  
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90«ENDIF»



**INSTRUCTIONS - LOCAL AGENCY BIDDER  
DBE COMMITMENT (CONSTRUCTION CONTRACTS)****ALL BIDDERS:**

**PLEASE NOTE: This information may be submitted with your bid. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions. Failure to submit the required DBE commitment will be grounds for finding the bid nonresponsive**

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract DBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. Prime contractors shall indicate all work to be performed by DBEs including, if the prime is a DBE, work performed by its own forces, if a DBE. The DBE shall provide a certification number to the Contractor and expiration date. Enter the DBE prime's and subcontractors' certification numbers. The form has a column for the Names of DBE contractors to perform the work (who must be certified on the date bids are opened and include the DBE address and phone number).

**IMPORTANT:** Identify **all** DBE firms participating in the project regardless of tier. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the DBE participation dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts), to determine how to count the participation of DBE firms.

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

**Local agencies** should complete the Local Agency Contract Award, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and filing.

**EXHIBIT 15-H DBE INFORMATION —GOOD FAITH EFFORTS**

**DBE INFORMATION - GOOD FAITH EFFORTS**

Federal-aid Project No. \_\_\_\_\_ Bid Opening Date \_\_\_\_\_

The \_\_\_\_\_ (City/County of) \_\_\_\_\_ established a Disadvantaged Business Enterprise (DBE) goal of \_\_\_\_\_% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>

**DBE Information - Good Faith Effort**

C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

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Names, addresses and phone numbers of firms selected for the work above:

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E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

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F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

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G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
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H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

**CALIFORNIA LABOR CODE RELATING TO APPRENTICES ON PUBLIC  
WORKS PROJECTS**

See following links: [www.dir.ca.gov](http://www.dir.ca.gov) and/or [www.leginfo.ca.gov](http://www.leginfo.ca.gov)

s:\engineering services\contract services\construction contracts\active projects\k15000000 - freeport  
shores bike & ped trail project\section 13\e- california labor code relating to apprentices on public  
works projects.docx

CITY/COUNTY OF \_\_\_\_\_

### DATA UNIVERSAL NUMBERING SYSTEM (D-U-N-S) NUMBER

Submit this form with the Executed Contract. If you fail to submit your D-U-N-S Number, the Department will not approve the contract

CONTRACT NUMBER:

CONTRACTOR NAME:

**BUSINESS ADDRESS (D-U-N-S Number Location):**

STREET: 1600 SEAPORT BLVD., SUITE 350

CITY: REDWOOD CITY

STATE: CA

ZIP CODE: 94063

D-U-N-S Number: 00-284-5360

Contact Name: RYAN SOROKA - INTERIM CONTROLLER

Telephone No: 650-216-3600

# TITLE VI

Title VI Language

**APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

**(1) Compliance with Regulations:**

The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**(2) Nondiscrimination:**

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

**(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment:**

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**(4) Information and Reports:**

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Recipient) or the (Name of Appropriate Administration) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Recipient), or the (Name of Appropriate Administration) as appropriate, and shall set forth what efforts it has made to obtain the information.

**(5) Sanctions for Noncompliance:**

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Recipient) shall impose such contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

**(6) Incorporation of Provisions:**

The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the (Recipient) or the (Name of Appropriate Administration) may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (Recipient) to enter into such litigation to protect the interests of the (Recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**BIDDER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE)- PART I**

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.054 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. **Photocopy this form for additional firms.**

Firm Name/ Address/ City, State, ZIP		Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Assistance Only (Complete DBE)
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> > \$15 million		
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> > \$15 million		
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> > \$15 million		
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs.)
			<input type="checkbox"/> > \$15 million		

Distribution: 1) Original - Local Agency File

**EXHIBIT 12-G**  
**Bidder's List of Subcontractors (DBE and Non-DBE)**

**BIDDER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE)- PART II**

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 26 of the Code of Federal Regulations. Photocopy this form for additional firms.

Firm Name/ Address/ City, State, ZIP		Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certification/DBE #)
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs)
			<input type="checkbox"/> > \$15 million		
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs)
			<input type="checkbox"/> > \$15 million		
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs)
			<input type="checkbox"/> > \$15 million		
Name		Phone	<input type="checkbox"/> < \$1 million		YES
Address			<input type="checkbox"/> < \$5 million		NO
City State ZIP		Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
			<input type="checkbox"/> < \$15 million		Age of Firm (Yrs)
			<input type="checkbox"/> > \$15 million		

Distribution: 1) Original - Local Agency File

**CITY OF SACRAMENTO**  
**PAYMENT BOND**  
Department of PUBLIC WORKS  
Page 1 of 1

Bond No.: \_\_\_\_\_  
Premium: \_\_\_\_\_

TO BE PROVIDED PRIOR TO CONSTRUCTION

**WHEREAS**, the City of Sacramento, in the State of California, hereinafter called City, has conditionally awarded to:

hereinafter called Contractor, a contract for construction of:

<INSERT PROJECT NAME>

Which contract is by reference incorporated herein and made a part hereof, and is hereinafter referred to as the Contract; and

**WHEREAS**, under the terms of the Contract and pursuant to Chapter 5 of Title 3 of Part 6 of Division 4 of the California Civil Code (commencing with Civil Code Section 9550), Contractor is required to furnish a good and sufficient payment bond to secure payment of the claims to which reference is made in Civil Code Section 9554.

**NOW, THEREFORE**, we the Contractor and (*here insert full name and address of Surety*):

\_\_\_\_\_ a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, and unto all persons or entities entitled to assert a claim against a payment bond under any of the aforesaid Civil Code provisions in the sum of \_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), on the condition that if Contractor shall fail to pay for any materials or equipment furnished or used in performance of the Contract, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board or the Employment Development Department from the wages of employees of the Contractor and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses and fees, including attorney's fees, reasonably incurred by any party in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in any judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect, and shall bind Contractor, Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

It is hereby stipulated and agreed that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, State agencies and other entities entitled to assert a claim against a payment bond under any of the aforesaid Civil Code provisions, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

**IN WITNESS WHEREOF**, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Contractor) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
(Surety) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

ORIGINAL APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CITY OF SACRAMENTO  
PERFORMANCE BOND**

Department of PUBLIC WORKS  
Page 1 of 1

Bond No.: \_\_\_\_\_  
Premium: \_\_\_\_\_

TO BE  
PROVIDED  
PRIOR TO  
CONSTRUCTION

**WHEREAS**, the City of Sacramento, State of California, hereinafter called City, has conditionally awarded to *(here insert full name and address of Contractor)*:

as principal, hereinafter called Contractor, a contract for construction of:

<INSERT PROJECT NAME>

which contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the contract, and is hereinafter referred to as the Contract; and

**WHEREAS**, under the terms of the Contract, Contractor is required to furnish a bond for the faithful performance of the Contract.

**NOW, THEREFORE**, we the Contractor and *(here insert full name and address of Surety)*:

\_\_\_\_\_ ,  
a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, as obligee, in the sum of: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),

for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless the City, its officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect. This obligation shall remain in full force and effect through the end of the Contract warranty period, which will expire one year after the completion of work date specified in the Notice of Completion filed for the above-named project.

As part of the obligations secured hereby and in addition to the sum specified above, there shall be included all costs, expenses and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

**IN WITNESS WHEREOF**, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Contractor) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
(Surety) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

ORIGINAL APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney

**WORKER'S COMPENSATION CERTIFICATION**

In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the below certificate must be signed and filed with the awarding body prior to performing any work under this contract. Labor Code Section 3700, inter alia, states the following:

"Every employer shall secure the payment of compensation in one or more of the following ways:

- "(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- "(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

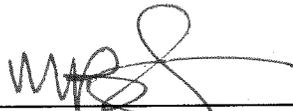
To be signed by authorized corporate officer or partner or individual submitting the Proposal. If Bidder is: (example)

1. An individual using a firm name, sign: "John Doe, an individual doing business as Blank Company."
2. An individual doing business under his own name, Sign: your name only.
3. A co-partnership, sign: "John Doe and Richard Doe, co-partners doing business as Blank Company, by, John Doe, co-partner.
4. A corporation, sign: "Blank Company, by John Doe, Secretary." (or other title)

*I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.*

DATE: 6.17.13

Contractor RUDOLPH AND SLETTER, INC.

By   
Signature

## Construction and Demolition (C&D) Debris Recycling Requirements

As a condition of receiving this Contract, Contractor agrees to fully comply with the requirements specified herein for all demolition projects, as well as projects with a valuation of \$250,000 or more:

1. **Definitions.** For purposes of this section, the following terms, words and phrases shall have the following meanings:

“Certified C&D sorting facility” means a facility that receives C&D debris and/or processes C&D debris into its component material types for reuse, recycling, and disposal of residuals and possesses a valid certificate as a C&D sorting facility from the Sacramento Regional County Solid Waste Authority.

“Construction and demolition debris” or “C&D debris” means used or commonly discarded materials resulting from construction, repair, remodel or demolition operations on any pavement, house, building, or other structure, or from landscaping that are not hazardous as defined in California Health and Safety Code section 25100 et seq. Such materials include, but are not limited to, concrete, asphalt, wood, metal, brick, dirt, sand, rock, gravel, plaster, glass, gypsum wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting, masonry, plastic pipe, trees, and other vegetative matter resulting from land clearing and landscaping.

“Divert” or “diversion” means to use materials for any purpose other than disposal in a landfill or transformation facility. Methods to divert materials include on-site reuse of the materials, delivery of materials from the project site to a certified C&D sorting facility or a recycling facility, or other methods as approved in regulations promulgated by the City Department of Utilities.

“Franchised waste hauler” means a person who possesses a valid commercial solid waste collection franchise issued by the Sacramento Regional County Solid Waste Authority.

“Mixed C&D debris” means loads that include commingled recyclable and non-recyclable C&D debris generated at a project site.

“Recyclable C&D debris” means C&D debris required to be diverted from landfills as specified in the Waste Management Plan and returned to the economic mainstream in the form of raw material for new, reused or reconstituted products that meet the quality standards necessary to be used in the marketplace.

“Recycling facility” means a facility or operation that receives, processes, and transfers source-separated recyclable materials.

“Source-separated C&D debris” means recyclable C&D debris that is separately sorted and containerized at the site of generation by individual material type and segregated from mixed C&D debris prior to collection and transporting.

“Waste log” means a record detailing the management of C&D debris generated by the covered project, including the date and weight/volume of material by type that was salvaged, reused, recycled or disposed.

2. **Waste Management Plan.** A completed WMP (see **Attachment 1**) must be submitted to and approved by the City prior to commencing any work on the project. The WMP must specify the types of C&D debris that will be generated from the project; the manner in which C&D debris will be managed and/or stored on the project site; the manner in which recyclable C&D debris generated from the project will be recycled or reuse; the person who will haul, collect or transport the recyclable C&D debris from the project site; and the certified C&D sorting facility or recycling facility where recyclable C&D debris will be delivered. The WMP must be approved by the City prior to commencing any work on the project.

3. Contractor shall be solely responsible for diverting the recyclable C&D materials specified on the WMP. Mixed C&D debris shall be delivered to a SWA-certified C&D sorting facility only. Only the permit holder, the person who generates the waste, a franchised waste hauler, or the City of Sacramento can transport or haul mixed C&D debris. Source-separated C&D debris may be delivered by any person to any recycling facility that accepts such materials. (See **Attachment 2** for list of C&D Debris Haulers and Facilities).

4. During the course of the project, Contractor shall maintain a waste log (see **Attachment 3**), and keep all weight tickets or weight receipts, for all C&D debris hauled away from the project. At a minimum, the waste log shall specify the C&D debris generated by the project; the manner in which C&D debris was recycled or re-used; and the facility where the C&D debris was delivered.

5. Within 30 days after submitting the project completion report, Contractor shall submit to the City a completed waste log, along with copies of supporting weight tickets. Contractor shall maintain and keep accurate and complete records of all bills, weight receipts or weight tickets that were issued for the collection, transport or disposal of C&D debris for a period of one-year after submittal of the waste log. The records shall be made available for inspection, examination and audit by the City during the one-year retention period to validate the information provided in the WMP and in the waste log. If the City determines noncompliance by the Contractor after an audit has been conducted, Contractor shall reimburse the City for all costs incurred in performing the audit.

6. Failure by Contractor to comply with any provisions specified herein will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; imposition of a penalty, payable to the City (\$50-\$250 for first offense, \$251-\$500 for second offense, and \$501-\$1500 for subsequent offenses); and/or submission of a performance security deposit fee when submitting a permit application to the City for a project within one year of imposition of the penalty.

For questions or to obtain more information about the Recycling Requirements for C&D debris, contact the City of Sacramento, Solid Waste Services Division, 2812 Meadowview Road, Building 1, Sacramento, CA 95832, or telephone (916) 808-4833, or email [C&D@cityofsacramento.org](mailto:C&D@cityofsacramento.org)

# C&D Debris Waste Management Plan

C&D Debris Waste Management Plan  
City of Sacramento Solid Waste Services  
2812 Meadowview Road, Building 1  
Sacramento, CA 95832  
Phone: (916) 808-4839 / Fax: (916) 808-4999  
C&D@cityofsacramento.org

Form  
submitted by:

Please attach a business card, or put your name with a phone number and/or an email address.

This Waste Management Plan (WMP) must be submitted and approved before work can begin. Only one WMP is required for each public construction project. The administration fee and, if applicable, a security deposit must be submitted with this form to be approved. Administration fee is 0.04% of project bid amount (min \$40, max \$800); security deposit, if applicable, is 1% of bid amount (max \$10,000). The accompanying Waste Log must be submitted within 30 days of the project completion report, or a penalty may be imposed.

## A. Building Project Information:

Job Address: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_

Engineering  
Estimate: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

## B. Briefly describe the project:

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## C. Materials Required to be Recycled

**50% of all debris must be recycled** if generated during the course of your project. You can either **source-separate** them, which may be hauled by anyone, or mix them in one container and send the **mixed C&D debris** load to a **Certified Mixed C&D Sorting Facility**. Mixed C&D loads can only be hauled by a franchised hauler or self-hauled. Please see the Definitions section, on the next page, for more information.

**50%**  
of all debris  
must be recycled

## D. Material Management

1. How will C&D debris will be stored on the project site: \_\_\_\_\_ Mixed C&D \_\_\_\_\_ Source-Separated
2. Company to haul away debris: \_\_\_\_\_
3. Facilities to receive debris: \_\_\_\_\_

# C&D Debris Waste Management Plan

C&D Debris Waste Management Plan  
City of Sacramento Solid Waste Services  
2812 Meadowview Road, Building 1  
Sacramento, CA 95832  
Phone: (916) 808-4839 / Fax: (916) 808-4999  
C&D@cityofsacramento.org

## E. Definitions.

Please read and understand these terms. Call Solid Waste at (916) 808-4833 if these terms are not clear to you. More information is also available online at <http://www.cityofsacramento.org/utilities/>.

1. **Self-haul or self-hauling:** This is when the general contractor or a subcontractor *who is doing work on the project* hauls their own waste materials for recycling or disposal. Note that a *jobsite cleanup crew is not doing other work on the project and is not self-hauling*. Jobsite cleanup crews need to be franchised in order to haul mixed C&D debris away.
2. **Franchised hauler:** Check the Department of Utilities (DOU) website for a list of these haulers. Only these companies and the City of Sacramento can collect and haul mixed C&D debris generated within the City for a fee.
3. **Source separation:** This means keeping wood, metal, cardboard, or other recyclables in separate containers, and sending the materials to an authorized recycler. A list of authorized recyclers can be found on the DOU web site. Source-separated materials may be hauled by anyone.
4. **Mixed C&D debris:** This means putting all recyclable debris into one container. Mixed materials must be sent to a certified mixed C&D sorting facility. Mixed materials may be either self-hauled or hauled by a franchised hauler. If your job site is crowded, this option saves the most space.
5. **Certified Mixed C&D Sorting Facility:** See the DOU web site for a list. These facilities have been certified by the Sacramento Regional Solid Waste Authority (SWA) to extract recyclable materials from mixed C&D debris.

## F. Terms and Conditions

- Your approved Waste Management Plan and Waste Log must be kept on the job site for the duration of the project.
- City of Sacramento Solid Waste Services staff may enter the jobsite to inspect waste collection areas.
- **ALL Clean Wood Waste** (unpainted, untreated lumber, plywood and OSB), **Inert Materials** (concrete, asphalt paving, brick, block, and dirt), **Wooden Pallets**, **Scrap Metal**, and **Corrugated Cardboard** must be recycled.
- Only SWA-Certified Mixed C&D Sorting Facilities may be used to recycle these materials if mixed with other materials.
- Only the City of Sacramento, SWA-Franchised Haulers, or self-haulers (as defined above) may collect and transport mixed C&D material from the jobsite.
- C&D Debris may not be burned or dumped illegally.
- Your Waste Log must be completed and submitted, with supporting weight tickets, within 30 days of submitting your project completion report. All waste hauling and disposal or recycling activity must be entered on the Waste Log, including information from any subcontractors who self-hauled their own debris off-site.
- You must keep all receipts or weight-tickets from your project for a period of one year from the submittal of your waste log.
- Failure to comply with these terms and conditions may result in a fine and payment of a security deposit on future projects.

# C&D Debris Haulers & Facilities

C&D Debris Waste Management Plan  
City of Sacramento Solid Waste Services  
2812 Meadowview Road, Building 1  
Sacramento, CA 95832  
Phone: (916) 808-4833 / Fax: (916) 808-4999  
C&D@cityofsacramento.org

## Certified Mixed C&D Facilities

Allied Waste / Elder Creek Transfer and Recovery	(916) 387-8425
Florin-Perkins Public Disposal	(916) 443-5120
L&D Landfill	(916) 737-8640
Waste Management / K&M Recycle America	(916) 452-0142

## Franchised Haulers

ACES Waste Services, Inc.	(866) 488-8837	Elk Grove Waste Management, LLC	(916) 689-4052
Allied Waste Services	(916) 631-0600	Mini Drops, Inc.	(916) 686-8785
All Waste Systems, Inc.	(916) 456-1555	Norcal Waste Services of Sacramento	(916) 381-5300
Atlas Disposal Industries, LLC	(916) 455-2800	North West Recyclers	(916) 686-8575
California Waste Recovery Systems	(916) 441-1985	Waste Management of Sacramento	(916) 387-1400
Central Valley Waste Services, Inc.	(209) 369-8274	Waste Removal & Recycling	(916) 453-1400
City of Sacramento Solid Waste	(916) 808-4839	Western Strategic Materials, Inc.	(916) 388-1076

## Recyclers\*

Bell Marine	(916) 442-9089
C & C Paper Recycling	(916) 920-2673
EBI Aggregates	(916) 372-7580
International Paper	(916) 371-4634
Modern Waste Solutions	(916) 447-6800
PRIDE Industries, Inc.	(916) 640-1300
Recycling Industries, Inc.	(916) 452-3961
Sacramento Local Conservation Corps	(916) 386-8394
Smurfit-Stone Container Corporation	(916) 381-3340
Southside Art Center	(916) 387-8080
Spencer Building Maintenance, Inc.	(916) 922-1900

## Recovery Stations & Landfills

Elder Creek Recovery & Transfer Station	(916) 387-8425
Kiefer Landfill	(916) 875-5555
L & D Landfill	(916) 383-9420
North Area Recovery Station	(916) 875-5555
Sacramento Recycling & Transfer Station	(916) 379-0500
Waste Management Recycle America	(916) 452-0142

More updated information can be found online at:

<http://www.cityofsacramento.org/utilities/>

\* Please note that any facility may receive source-separated recyclable materials as long as it is authorized to do so by the State of California. This is not meant to be a complete list.



**GUARANTEE**

We hereby guarantee the Design-Assist With Option for a GMP Contract  
with the City of Sacramento for one (1) year in accordance with the guarantee required in the specifications. We  
agree to repair or replace any or all such work, together with all or any other work which may be displaced in so  
doing, that may be proven defective in workmanship or material within the one-year period from the date of  
acceptance without any expense whatsoever to the City, ordinary wear and tear and unusual abuse or neglect  
excepted.

In the event of our failure to comply with the above-mentioned conditions within five (5) days time after being  
notified in writing, we collectively or separately, do hereby authorize the City to proceed to have the defects  
repaired and made good at our expense and will pay the costs and damages, including but not limited to any  
related attorney fees and City staff and administrative expenses, therefor immediately upon demand.

Dated: 6.17.13

Signed: 

MARTIN SKEMORE  
Printed Name

RUDOLPH AND JETTEN, INC.  
Company

1600 SPORT BLVD. SUITE 350  
Address

REDWOOD CITY, CA 94063



DEPARTMENT OF  
TRANSPORTATION

CITY OF SACRAMENTO  
CALIFORNIA

915 I St, RM 2000

SACRAMENTO, CA  
95814-2702

ENGINEERING SERVICES  
DIVISION

PH 916-808-8300  
FAX 916-808-8281

### NOTICE TO PROCEED

DATE

ABC Construction  
Attn: John Construction  
123 ABC Street  
Sacramento, CA 95814

**RE: PROJECT NAME (PN: )**

Notice is hereby given you are authorized to commence work on the above referenced project on \_\_\_\_\_. You are legally required to begin work within fifteen (15) working days of this date. The entire work on the project must be completed within \_\_\_\_ ( ) **working days** from the date of this notice. Forty eight (48) hours prior to starting work, please notify the Project Manager \_\_\_\_\_, 808-\_\_\_\_. Please address all correspondence to:

Engineering Services Division  
915 I Street, Room 2000  
Sacramento, CA 95814  
(916) 808-8300/ (916) \_\_\_\_\_  
(916) 808-7903 FAX  
Attn: \_\_\_\_\_

Please reference City Project No. \_\_\_\_\_ in all billing and correspondence. We look forward to a mutually successful project. The City of Sacramento is committed to the "Partnering Concept" of open communication and cooperative construction. In that spirit, please do not hesitate to contact us via phone at (916) 808-8195 or FAX at (916) 808-8281 if we can be of any assistance.

Respectfully,

Receipt Acknowledged, \_\_\_\_\_

\_\_\_\_\_  
Jose R. Ledesma  
Contract Services

\_\_\_\_\_  
Signature Date

CC:

Tim Mar  
Risk Management  
Shareen Kidd  
Project File

\_\_\_\_\_  
Title

## DESIGN SUPPORT SERVICES

### 4. SUPPORT SERVICES REQUIREMENTS

#### 4.1 Pre-Construction Phase Services

**4.1.1** CONTRACTOR shall provide the following support services through completion of Pre-Construction Phase activities and preparation of the Guaranteed Maximum Price (GMP).

CONTRACTOR shall provide the following support services, as a **minimum**, to assist the CITY and CITY's Design Consultant prior to completion of the GMP:

1. Design meetings and workshops with the design team and City
2. Regulatory meetings
3. Coordination meetings
4. Constructability review meetings
5. Accessibility review meetings
6. LEED implementation meetings
7. Value Engineering session
8. Cost estimating meetings with City's cost estimator
9. Project phasing and segmentation coordination meetings
10. Bid packaging and documentation meetings
11. Design and drawing review for constructability, efficiency and coordination.
12. Development and recommendation of design changes that will maintain quality, schedule and design intent while reducing construction cost.
13. Organize, prepare cost estimates at 60%, 90%, and 100% completion, with supporting information, and document results from Value Engineering workshops, including life-cycle cost impacts when directed by the City.
14. Prepare phased project schedules and implementation plans addressing construction activities and the on-going use and operation of the transportation station facilities. The phased schedule shall be modified as necessary through completion of the GMP to reflect the project scope. Project schedules shall be based on design options and alternatives and provide recommendations to maximize market potential in release of drawings and phased construction.
15. Provide recommendations on LEED design options based on cost and risk for each option used to achieve proposed ranking.
16. Review and reconcile construction cost estimates prepared by City cost estimator at:
  - i. 60% completion
  - ii. 90% completion
  - iii. 100% completion
17. Conduct market research and determine availability of materials and labor in local construction market and make recommendations on cost savings considerations during design.
18. Develop and implement pre-qualification selection criteria for vendors, sub-

contractors, professionals and similar areas necessary for completion of the project.

19. Review construction documents for coordination, completion, and accuracy prior to bidding.
20. Develop and implement bidding procedures acceptable to the City for use throughout the remainder of the project and development of the GMP. Provide City with full disclosure of all project costs, including bidding details, including but not limited to, bid results, bid details, exclusions, assumptions, limitations, shared resources, contractor provided materials/equipment, detailed costs, allowances, schedule of values, etc.
21. Reconcile bids with cost estimates and total GMP.
22. Present a final GMP package to the City that covers all phases of construction necessary to provide the City with a complete and fully functional facility acceptable to the City.
23. Conduct site visits and field investigation of existing conditions.
24. Field investigation, documentation and restoration bidding specifications for repair and restoration of the mural at the East end of the main lobby.
25. Review of Construction Documents at
  - i. 60% Completion
  - ii. 90% Completion
  - iii. 100% Completion
26. Pile Foundation Investigation: CONTRACTOR to sawcut/remove/dispose existing concrete waste slab as necessary, hand-excavate to expose the face of approximately (50) existing wood timber piles, from underside of pile cap down approximately 18-24". The exposed piles will be evaluated by the Structural Engineer to confirm diameter, condition, and evaluate existing foundation capacity for additional building load due to added elevators. Rudolph and Sletten will backfill excavations after observation is complete. Waste slabs will be properly disposed of and will not be poured back at time of work (deferred to Phase II scope). Dust from excavation and potential odor from creosote-treated piles will be mitigated as best as possible via negative air machines and visqueen covers. Work to occur between 6:00pm and 2:00am or as otherwise authorized. City of Sacramento to coordinate this work with Amtrak and Phase I contractor as necessary. All testing and inspection costs excluded.

## **4.2 Construction Phase Services**

**4.2.1** CONTRACTOR shall provide the following support services through completion of Construction Phase activities concluding with filing the Final Notice of Completion for the entire project by CITY.

CONTRACTOR shall provide the following support services as a **minimum** to assist the CITY and CITY's Design Consultant through completion of the WORK. Services listed below are in addition to any and all other responsibilities mentioned in the remainder of this contract.

1. Provide all documentation and coordination required for excavation requiring DTSC review, approvals and permits. Provide all associated monitoring and documentation required by DTSC during excavations.
2. Provide relocations services for AMTRAK and related building occupants and equipment as needed to complete the WORK.
3. Provide storm water management plan, secure all approvals, pay for all permits and implement all requirements.
4. CONTRACTOR shall provide staff, workers, sub-contractors and all necessary resources required to mitigate demolition, disposal and work with materials containing lead paint.
5. Coordinate and conduct all building system start-up activity and training for City staff. Training shall include use and application of all system, supporting documentation, worksheets, maintenance and effective use of operations and maintenance manuals.
6. Provide and document all O&M manuals.
7. Prepare, notice and coordinate any and all "punchlist" activities. Document and coordinate results of all "punchlist" activities and provide results to City within 72 hours of any "punchlist" activities.

## **4.3 CONTRACTOR shall provide the following support services through completion of the Pre-Construction Phase & Construction Phase:**

### **a. Public Information Releases**

CONTRACTOR, and all associated firms and/or individuals, shall not release information concerning this Project for public relations or promotional purposes without the specific written authorization of the City. This limitation shall not prohibit the CONTRACTOR from referencing this Project in proposals developed by the CONTRACTOR to secure other contracts provided that CITY is contacted in advance and approves such use and reference.

Upon request by CITY, CONTRACTOR shall provide information necessary for the public information releases by the City.

### **b. Supporting Information Services**

CONTRACTOR agrees to work with the CITY and develop, prepare and provide information requested by regulatory agencies, reviews, environment assessments and similar activities necessary to obtain required consensus,

reviews and approvals for the project and related activities.

**c. Separate CITY Consultants**

CITY may secure the services of multiple separate consultants throughout the duration of the project and this contract. CONTRACTOR shall meet, coordinate, provide supporting information and generally support the work efforts of these consultants in a timely and expeditious manner at no additional cost to the project.

**d. Incentives, Rebates and Tax Benefits**

CONTRACTOR shall be responsible for reviewing the project scope and objectives with City staff and investigating the availability and impact of current or anticipated incentives and/or rebates for energy efficient design improvements available to the project. CONTRACTOR shall evaluate the operational and lifecycle impacts with City staff. CONTRACTOR shall prepare all documentation, calculations and supporting paperwork required to file for any incentives and/or rebates.

Rebates and incentives available to the owner or occupant shall remain the property of the City; however, incentives and tax benefits available only to the design team shall remain with the City's design team in addition to compensation set forth in their contract. Incentives and tax benefits available only to the CONTRACTOR remain with the CONTRACTOR in addition to compensation set forth in this contract. Where incentives and tax benefits are available to multiple parties the City's representative shall determine ownership of the incentives and/or tax benefits. The CONTRACTOR is responsible for all documentation, testing, certification and similar actions necessary to document qualifications for incentives and/or tax. The City assumes no responsibility for loss of incentives or tax benefits to the CONTRACTOR due to actions by the City or the City's design team.

**e. Omitted.**

**f. System Commissioning**

CONTRACTOR shall coordinate with CITY staff to provide access and appropriate subcontractors, equipment and resources to conduct commissioning required for LEED certification and other approvals. City may observe field tests necessary for system commissioning. CONTRACTOR is responsible for performing all Title 24 Acceptance Testing.

**g. Omitted.**

**h. Building Maintenance, Operations, Servicing**

CONTRACTOR shall meet with representatives from the City to determine how systems, spaces and access in the building will be facilitated for servicing and maintenance.

**i. As-Built Documents**

CONTRACTOR shall maintain a set of "as-built" drawings on site and updated on

a weekly basis, and available for the City to review. CONTRACTOR shall incorporate all construction changes in the final digital version of the drawings and specifications and provide "As-Built" CAD drawings to the City at the completion of the WORK with all operations and maintenance manuals. The "As-Built" drawings shall be provided to the City in PDF formats on electronic media. Specifications, O&M Manuals and similar documentation shall be provided in Microsoft Word format as well as PDF formats. Final documentation shall include video documentation of for all training and system start-up. CONTRACTOR shall provide a written copyright release for all documents prepared in reference to the As-Built Documents granting all rights to the CITY.

**j. Information Format**

CONTRACTOR shall provide all information developed for the project in an electronic format the City can readily use for reports, public notices, press releases, presentations and similar activities. The format shall be compatible with existing City software and resources.

**k. Code / Regulatory Interpretation or Conflict**

Where an interpretation, regulation, law or code conflicts with other interpretations, regulations, law or codes the CONTRACTOR shall follow the most stringent requirement.

**l. Title 24 Access Conflicts with ADA**

Where a conflict or apparent conflict occurs between Title 24 access requirements and requirements set forth under the Americans with Disabilities Act both requirements shall be met. Where the City agrees it is not necessary the design may include only the most restrictive requirement/interpretation.

**m. HERS Verified Duct Testing**

CONTRACTOR shall hire an independent HERS rater approved by the State of California to complete a 6% duct leakage test as outlined in the Non-Residential ACM. The HERS rater shall have completed at least 50 non-residential duct tests prior to conducting any tests on this project. All air distribution systems shall be tested, sampling shall not be allowed.

**n. Omitted.**

**o. Review and Coordination**

CONTRACTOR shall, organize and conduct reviews of design, details and assumptions with the City, Regulatory Authorities, and Utilities needed for efficient execution of the WORK. On or about the time of the scheduled submissions, CONTRACTOR shall establish a preliminary list of meetings necessary for the efficient execution of the WORK. The meetings, document preparation and submittal deadlines shall be incorporated into the project schedule.

**p. Meeting Notes**

Minutes of all meetings shall be prepared and maintained by CITY and provided to all attendees for review.

**q. Document Tracking**

CONTRACTOR shall provide CITY with access to an Internet based documentation and tracking system for issuance, distribution, tracking, status and archival of all Submittals, Request for Information (RFI), Field Directions, Proposed Change Orders, Change Orders, Payment Applications and similar documentation. The proposed system must be fully automated, include the ability to mark-up documents and generate status report and issue e-mail advisories of pending issues. The system must be reviewed and accepted by the City. CONTRACTOR shall maintain all training and maintenance.

**r. Photographic Documentation**

CONTRACTOR shall provide CITY with access to an Internet based photo documentation system updated on a weekly basis or as necessary and acceptable to the City to document execution of the WORK. Photos shall be linked to specific locations on the project. Final documentation shall be provided to the City at the end of the project in a fully functional format for archive and reference.

**s. Furniture, Fixtures, Systems and Equipment**

CONTRACTOR shall be responsible for bidding, purchasing and installation of all equipment, systems and furniture including but not limited to site furniture, public furniture, whiteboards, signage, electronic signs, parking kiosks, planters, bicycle racks and bike storage lockers, security systems, food service furniture and similar items as identified in the Contract Documents.

**t. CalGreen Compliance**

Contractor shall comply with all CalGreen requirements for new construction on this project even though the project is a restoration. City reserves the right to waive specific compliance on a case-by-case basis.

**u. Ownership of Scheduled Float**

The CITY retains full and complete ownership of all scheduled float listed in the schedule approved by the City. The approved schedule shall include a minimum of 60 calendar days float at the completion of all tasks necessary to complete the WORK.

**v. Off-Site Access Improvements**

Contractor shall maintain details and summary costs for all off-site improvements related to accessibility. Cost shall itemized and updated for each fiscal year from July 1 – June 30. Summary and detailed costs for each fiscal year shall be provided to the City on July 15 of each year through issuance of Final Completion.

- 4.4** City's review and approval of interim submissions are for the sole purpose of establishing a set of Contract Documents compatible with the requirements of the WORK. Neither City's review nor approval of any interim submissions or Construction Documents shall be deemed to transfer any liability from CONTRACTOR to City. City's review and approval shall not release the CONTRACTOR from compliance with ALL requirements in the Contract Documents unless specific item(s) are identified for modification, addition or removal and approved in writing by both the City and CONTRACTOR.

**Exhibit 10-H Cost Proposal**

Date June 16, 2013  
 Contract No.  
 Project Number  
 Consultant Rudolph & Sletten, Inc. (Pre-construction Services)

**DIRECT LABOR**

Classification	Name	Range	Hours	Initial Hourly Rate	Sub Totals	Total
VP Operations	Foad, Jon		0	\$132.21	\$0.00	
Project Executive	Home, John		0	\$84.00	\$0.00	
Project Manager	Lamberti, Garrett		0	\$50.00	\$0.00	
Sr Superintendent	Beevers, Bruce		0	\$83.17	\$0.00	
Assistant Superintend	Davidson, John		0	\$54.00	\$0.00	
Sr Project Engineer	Ratajczak, Michael		0	\$42.00	\$0.00	
Sr FOC	Kneidl, Mary		0	\$37.02	\$0.00	
Safety Director	Miller, Brian		0	\$68.27	\$0.00	
Mech Group Manage	McElligott, Brian		0	\$77.40	\$0.00	
Jobsite Safety Cordina	TBD		0	\$39.00	\$0.00	
Sr Mechanical Coordi	Burnett, Peter		0	\$55.29	\$0.00	
VP Estimating	Mohrman, Mike		0	\$139.90	\$0.00	
Sr Estimator	Pon, Jim		300	\$80.77	\$24,231.00	
Sr Electrical Est	Callison, Fred		100	\$83.17	\$8,317.00	
Sr Mech Est	Satoutah, Brahim		113	\$109.62	\$12,432.00	
			0	\$0.00	\$0.00	
Subtotal Direct Labor					\$44,980.00	
Anticipated Salary Increase					\$0.00	
Total Direct Labor Costs					\$44,980.00	
<b>Fring Benefits</b>						
	finge benefit rate	47.00%		\$21,140.60		
Total Fring Benefits					\$21,140.60	
<b>Indirect Costs</b>						
	general overhead	40.00%		\$17,992.00		
Total Indirect Costs					\$17,992.00	
<b>TOTAL LABOR</b>						<b>\$84,112.61</b>
<b>FEE</b>						
	Profit	7.00%		\$5,887.88		
Total					\$5,887.88	
<b>TOTAL FEE</b>						<b>\$5,887.88</b>
<b>OTHER COSTS</b>						
	Travel Costs					
	Equipment and Supplies					
	Other Costs (printing, copies, etc.)					
Total Other Costs					\$0.00	
<b>TOTAL OTHER COSTS</b>						<b>\$0.00</b>
<b>SUBCONSULTANT COSTS</b>						
	Historic Preservaion - Dreyfus Blackford			Total Subcontractor Costs		\$10,000.00
<b>TOTAL COSTS</b>						<b>\$100,000.49</b>

**Exhibit 10-H Cost Proposal**

Date 17 June 2013  
 Contract No.  
 Project Number  
 Consultant Dreyfuss & Blackford Architects

**DIRECT LABOR**

Classification	Name	Range	Hours	Initial Hourly Rate	Sub Totals	Total
Arch. Project Mgr.	Costa, Jennifer		64	\$34.50	\$2,208.00	
			0	\$0.00	\$0.00	
			0	\$0.00	\$0.00	
			0	\$0.00	\$0.00	
Subtotal Direct Labor					\$2,208.00	
Anticipated Salary Increase					\$176.64	
Total Direct Labor Costs					\$2,384.64	
<b>Fringe Benefits</b>	fringe benefit rate	80.00%		\$1,907.71		
Total Fringe Benefits					\$1,907.71	
<b>Indirect Costs</b>	general overhead	175.00%		\$4,173.12		
Total Indirect Costs					\$4,173.12	
<b>TOTAL LABOR</b>						<b>\$8,465.47</b>
<b>FEE</b>						
	Profit	20.00%		\$1,693.09		
Total					\$1,693.09	
<b>TOTAL FEE</b>						<b>\$1,693.09</b>
<b>OTHER COSTS</b>						
	Travel Costs					
	Equipment and Supplies					
	Other Costs (printing, copies, etc.)					
Total Other Costs					\$0.00	
<b>TOTAL OTHER COSTS</b>						<b>\$0.00</b>
<b>SUBCONSULTANT COSTS</b>						
	(see attached Cost Proposals)			Total Subcontractor Costs		\$0.00
<b>TOTAL COSTS</b>						<b>\$10,158.57</b>

**GRANT AGREEMENT UNDER THE  
FULL-YEAR CONTINUING APPROPRIATIONS, 2011, (DIVISION B OF  
THE DEPARTMENT OF DEFENSE AND FULL-YEAR CONTINUING  
APPROPRIATIONS ACT, 2011 (PUB. L. 112-10, APR. 15, 2011)), FOR  
THE NATIONAL INFRASTRUCTURE INVESTMENTS DISCRETIONARY  
GRANT PROGRAM (FY 2011 TIGER DISCRETIONARY GRANTS)**



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

## Grant/Cooperative Agreement

1. RECIPIENT NAME AND ADDRESS City of Sacramento 915 I St Ste 2000 Sacramento, CA 95814-2616		2. AGREEMENT NUMBER: FR-TII-0011-13-01-00	3. AMENDMENT NO. 0	
		4. PROJECT PERFORMANCE PERIOD:	FROM 02/15/2013	TO 11/30/2016
		5. FEDERAL FUNDING PERIOD:	FROM 02/15/2013	TO 11/30/2016
1A. IRS/VENDOR NO. 946000410	6. ACTION New			
1B. DUNS NO. 827814299				
7. CFDA#: 20.933	9. TOTAL OF PREVIOUS AGREEMENT AND ALL AMENDMENTS		0.00	
8. PROJECT TITLE Sacramento Intermodal Phase 2- Sacramento Valley Station (SVS)		10. AMOUNT OF THIS AGREEMENT OR AMENDMENT		15,000,000.00
		11. TOTAL AGREEMENT AMOUNT		15,000,000.00
12. INCORPORATED ATTACHMENTS THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF: Standard Terms and Conditions, Attachment 1; Statement of Work, Attachment 2; Approved Project Budget, Attachment 3; Performance Measurement Table, Attachment 4 Assurances and Certifications, Attachment 5				
13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112-55 (November 18, 2011))				
14. REMARKS				
<b>GRANTEE ACCEPTANCE</b>			<b>AGENCY APPROVAL</b>	
15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Mr. Jerry Way			17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL Ms. Gina Matrassi-ao	
16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL Electronically Signed	16A. DATE 04/03/2013	18. SIGNATURE OF AUTHORIZED FRA OFFICIAL Electronically Signed	18A. DATE 04/12/2013	
<b>AGENCY USE ONLY</b>				
19. OBJECT CLASS CODE: 41010			20. ORGANIZATION CODE: 9013000000	
21. ACCOUNTING CLASSIFICATION CODES				
DOCUMENT NUMBER FR-TII-0011-13-01-00	FUND 2712130143	BY 2013	BPAC 0143T429Y0	AMOUNT 15,000,000.00

## AWARD ATTACHMENTS

City of Sacramento

FR-TII-0011-13-01-00

1. Standard Terms and Conditions, Attachment 1
2. Statement of Work, Attachment 2
3. Approved Project Budget, Attachment 3
4. Performance Measurement Table, Attachment 4
5. Assurances and Certifications, Attachment 5

## ATTACHMENT 1

### **GRANT AGREEMENT UNDER THE CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT, 2012 (PUB. L. 112-055, NOV. 18, 2011)), FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS DISCRETIONARY GRANT PROGRAM (FY 2012 TIGER DISCRETIONARY GRANTS)**

This agreement (the "Agreement" or "Grant Agreement") reflects the selection of the recipient identified in section 1 of the Grant/Cooperative Agreement (page 1) ("Grantee" or "Recipient") as a Recipient of a grant awarded under the provisions of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-055, Nov. 18, 2011)), regarding National Infrastructure Investments (the "Act"). The grant program under the Act is referred to as "FY 2012 TIGER Discretionary Grants" or "TIGER Discretionary Grants."

#### **SECTION 1. LEGISLATIVE AUTHORITY**

- a) The U.S. Department of Transportation ("DOT" or "Government") is authorized to award \$500 million in the TIGER Discretionary Grants pursuant to Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-055, Nov. 18, 2011) (the "Act"). This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or "TIGER Discretionary Grant," program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), the TIGER II Discretionary Grants pursuant to Title I (Department of Transportation) of Division A of the Consolidated Appropriations Act, 2010 and the TIGER Discretionary Grants pursuant to Title XII (Transportation, Housing and Urban Development, and Related Agencies) of Division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. Because of the similarity in program structure and objectives, DOT is referring to the grants for National Infrastructure Investments under the Act as "TIGER Discretionary Grants."
- b) The grant awards made under the TIGER Discretionary Grant program are in full compliance with the Act, the Notice of Funding Availability, Request for Comments (77 FR 4863, January 31, 2012).
- c) Funds for the TIGER Discretionary Grant program are being awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Additionally, the awards ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and the investment in a variety of transportation modes.
- d) The Act specifies that not less than \$120 million of the funds provided for TIGER Discretionary Grants be used for projects located in rural areas.

## SECTION 2. GENERAL TERMS AND CONDITIONS

- a) This Agreement is entered into between DOT, acting through the Federal Railroad Administration ("FRA"), and the Grantee. The Agreement will be administered by FRA (also referred to herein as the "Government").
- b) The Grantee shall be responsible for ensuring that the Project is financed, constructed, operated and maintained in accordance with this Agreement and in compliance with all applicable Federal laws, regulations and policies.
- c) The maximum obligation of the Government payable under this Agreement shall be as specified in section 4(d) of this Attachment 1 of the Agreement, subject to all the terms and conditions in this Agreement and of all other Federal grant awards funding the Project. FY 2012 TIGER Discretionary Grant funds for this Project will be authorized for expenditure by the Grantee only when this Agreement is fully executed by both parties.
- d) Payment of the Grant will be made pursuant to and in accordance with 49 C.F.R. Parts 18 and 19 (to the extent that a non-governmental grantee receives grant funding), and the provisions of such regulations and procedures as the Government may prescribe. Final determination of the Grant's expenditures may be based upon a final review of the total amount of agreed Project costs and settlement will be made for adjustments to the Grant amount in accordance with applicable government-wide cost principles under 2 C.F.R. 225 (State and Local Governments); 2 C.F.R. 215 (Higher Education Institutions); and 2 C.F.R. 230 (Non-Profit Organizations). If there are any differences between the requirements of 49 C.F.R. Parts 18 and 19 and Title 49 of the United States Code and Code of Federal Regulations, the Title 49 requirements will take precedence.
- e) The Grantee agrees to notify the Government within 14 calendar days of any change in circumstances or commitments that adversely affect the Grantee's plan to complete the Project as is described in Attachments 2 and 3 to this Agreement. In its notification, the Grantee shall advise the Government of the actions it has taken or plans to take to ensure completion of the Project and shall reaffirm its commitment to the Government as set forth in this Agreement. The Government is not responsible for any funding shortfalls regarding the non-TIGER Discretionary Grant amount share. The FY 2012 TIGER Discretionary Grant Amount will remain unchanged. (See Section 13 of this Attachment 1 to the Agreement regarding termination).
- f) The Grantee agrees to carry out and complete the Project without undue delays and in accordance with the terms hereof, including the Estimated Project Schedule set out in Attachment 2, and such regulations and procedures as the Government may prescribe.
- g) The Grantee has submitted a request for Federal assistance, hereinafter referred to as the "Technical Application" or "Application," hereby incorporated by reference into this Agreement, and the Government is relying upon the Grantee's assurances, certifications, and other representations made in the Technical Application, or any other related documents submitted to the Government; and, in its submissions, the Grantee has demonstrated justification for the Project, and has demonstrated the financial and technical feasibility of the Project, including the

ability to start construction quickly upon receipt of the Grant; to expend Grant funds once construction starts; and to receive all necessary environmental, state and local planning, and legislative approvals necessary for the Project to proceed in accordance with the Project Schedule. This Grant is made to the Grantee for the Project, including the Project's scope, assurance/confirmation that all required funding has been obtained and committed, and the timeline for completion of the Project.

h) The Government has determined that the Project is an Eligible Project as it provides a highway or bridge project, public transportation project, passenger or freight rail transportation project, or a port infrastructure project, or other such eligible project as authorized, and that the Project will have a significant impact on the Nation, a metropolitan area, or a region. The Government has determined that Grantee should receive the award of a Grant based on a review of the Project's Technical Application, as it meets the requirements specified in the Act and the January 31, 2012, *Federal Register* Notice, "Notice of Funding Availability for the Department of Transportation's National Infrastructure Investments Under the Full-Year Continuing Appropriations, 2012; and Request for Comments" (Available at [http://www.dot.gov/tiger/docs/fy12\\_tiger\\_nofa.pdf](http://www.dot.gov/tiger/docs/fy12_tiger_nofa.pdf)).

i) The Grantee will be monitored periodically by the Government, both programmatically and financially, to ensure that the Project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The Grantee is responsible for monitoring award activities, to include sub-awards, to provide reasonable assurance that the Federal award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

j) The Grantee agrees to take all steps, including initiating litigation, if necessary, to recover Federal funds if the Government determines, after consultation with the Grantee, that such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project. For the purposes of this Agreement, the term "Federal funds" means funds however used or disbursed by the Grantee that were originally paid pursuant to the Agreement.

k) The Grantee agrees to retain all documents relevant to the Grant award for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The Grantee agrees to furnish the Government, upon request, all documents and records pertaining to the determination of the Grant amount or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Grantee, in court or otherwise, involving the recovery of such Grant amount shall be approved in advance by the Government.

l) The Government is subject to the Freedom of Information Act (FOIA). The Grantee should therefore be aware that all applications and related materials submitted by the Grantee related to this Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

m) The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

n) The Grantee agrees to: 1) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and 2) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – have an opportunity to benefit from activities funded through this Agreement. An example of a best practice under 2) above would be to incorporate key elements of the Department's Disadvantage Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Grantee would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a Grantee, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement. The Grantee must provide FRA a plan for incorporating the above best practice into its implementation of the Project within 30 days following execution of this Agreement. If the Grantee is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the Grantee agrees to provide the FRA with a written explanation and an alternative program for ensuring that contractors owned and controlled by socially and economically disadvantaged individuals are provided the opportunity to benefit from activities funded through this Agreement.

o) The Government encourages the Grantee and the State Department of Transportation acting as the limited agent on behalf of the Grantee (if applicable), to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving," Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving," Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at [http://www.dot.gov/ost/m60/Financial\\_Assistance\\_Management\\_Home/FAPL\\_2010-01.pdf](http://www.dot.gov/ost/m60/Financial_Assistance_Management_Home/FAPL_2010-01.pdf)). This includes, but is not limited to, the Grantee and the State Department of Transportation acting as the limited agent on behalf of the Grantee:

- 1) considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- 2) conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- 3) encouraging voluntary compliance with the agency's text messaging policy while off duty.

The Grantee is encouraged to insert the substance of this clause in all assistance awards.

- p) The Grantee shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth.
- q) The Grantee agrees that it will comply with the provisions of the Davis-Bacon Act, 40 U.S.C. § 3141, et seq., as is specified in the Act.

### **SECTION 3. APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into the Agreement the Grantee assures and certifies, with respect to this grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to the Agreement include but are not limited to the following:

#### **General Federal Legislation**

- a. Davis-Bacon Act - 40 U.S.C. 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act - 5 U.S.C. 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470f
- f. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469a through 469c.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended
- i. Section 404 of the Clean Water Act, as amended 33 U.S.C. 1251, et seq.
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended.
- k. Coastal Zone Management Act, P.L. 92-583, as amended.
- l. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. 4541, et seq.

- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42U.S.C. 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C.8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. 874 and 40 U.S.C. 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended - 16 U.S.C. 1271, et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. 1251-1376
- y. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. 1681 through 1683, and 1685 through 1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. 2000d *et seq.*
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. 541, et seq.
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions - 31 U.S.C. 1352
- ff. Freedom of Information Act - 5 U.S.C. 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act - 16 U.S.C. 1855
- hh. Farmlands Protection Policy Act of 1981 - 7 U.S.C. 4201
- ii. Noise Control Act of 1972 - 42 U.S.C. 4901, et seq.
- jj. Fish and Wildlife Coordination Act of 1956 - 16 U.S.C. 661
- kk. Section 9 of the Rivers and Harbors Act and General Bridge Act of 1946 - 33 U.S.C. 401
- ll. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. 138
- mm. Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. 6901, et seq.
- nn. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. 9601-9657
- oo. Safe Drinking Water Act -- 42 U.S.C. 300F-300J-6
- pp. Wilderness Act -- 16 U.S.C. 1131-1136
- qq. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 -- 42 U.S.C. 6901, et seq.
- rr. Migratory Bird Treaty Act 16 U.S.C. 760c-760g
- ss. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252)
- tt. Cargo Preference Act of 1954 - 46 U.S.C. 55305
- uu. Buy America provisions -- 49 U.S.C. 24405(a)

#### Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11988 - Floodplain Management

- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency

**General Federal Regulations**

- a. Interim Final Guidance on Buy American – 74 FR 18449 (April 23, 2009), 2 C.F.R. Part 176
- b. Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations – 2 C.F.R. Part 215
- c. Cost Principles for State and Local Governments – 2 C.F.R. Part 225
- d. Non-procurement Suspension and Debarment – 2 C.F.R. Part 1200
- e. Investigative and Enforcement Procedures - 14 C.F.R. Part 13
- f. Procedures for predetermination of wage rates - 29 C.F.R. Part 1
- g. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States - 29 C.F.R. Part 3
- h. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) - 29 C.F.R. Part 5
- i. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) - 41 C.F.R. Parts 60, et seq.
- j. Contractor Qualifications - 48 C.F.R. Part 9
- k. Uniform administrative requirements for grants and cooperative agreements to state and local governments - 49 C.F.R. Part 18
- l. New Restrictions on Lobbying – 49 C.F.R. Part 20
- m. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- n. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs - 49 C.F.R. Part 24
- o. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - 49 C.F.R. Part 25
- p. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance - 49 C.F.R. Part 27
- q. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- r. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors - 49 C.F.R. Part 30
- s. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- t. DOT's implementing ADA regulations, including the ADA Accessibility Guidelines in Part 37, Appendix A - 49 C.F.R. Parts 37 and 38
- u. Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49

- C.F.R. Part 40
- v. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26
  - w. Preference for Privately Owned Commercial U.S. Flag Vessels – 46 C.F.R. Part 381.

**Office of Management and Budget Circulars**

- a. A-87 – Cost Principles Applicable to Grants and Contracts with State and Local Governments
- b. A-102 – Grants and Agreements with State and Local Governments
- c. A-133 - Audits of States, Local Governments, and Non-Profit Organizations
- d. Any other applicable OMB Circular based upon the specific TIGER Grant Recipient

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are hereby incorporated by reference into the Agreement.

**SECTION 4. GRANTEE AND PROJECT INFORMATION**

a) Grantee: This Grant is made to the Grantee for the project as described in the Grantee's Technical Application (the "Project") and the negotiated provisions on the Project's material terms and conditions, including the Project's scope, assurance/confirmation that all required funding has been obtained and committed, and the timeline for completion of the Project. The Grantee agrees to abide and comply with all terms and conditions of this Agreement and to abide by, and comply with, all requirements as specified in all exhibits and attachments, which are considered as integral parts of this Agreement. In the case of any inconsistency or conflict between the specific provisions of this Agreement, the exhibits and the attachments, such inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions and terms of this Agreement; second, by giving preference to the provisions and terms of Attachment 1; and third, by giving preference to the provisions and terms of other attachments.

The Dun and Bradstreet Data Universal Numbering System (DUNS) No. of the Grantee is identified in section 1B on the Grant/Cooperative Agreement (page 1)

Name of any First-Tier Sub-Grantees or Sub-Recipients (if applicable—to be reported if/when identified. If not applicable, note as N/A)

DUNS No. of First-Tier Sub-Grantees or Sub-Recipients (if applicable—to be reported if/when identified. If not applicable, note as N/A)

b) Notices:

Notices required by this Agreement should be addressed as follows:

As to the FRA:  
Mariam Ouhamou  
Grant Manager

Federal Railroad Administration, U.S. Department of Transportation  
1200 New Jersey Avenue, SE - Mail Stop 20 Washington, DC 20590  
(202) 493-6437  
Mariam.ouhamou@dot.gov

As to the Grantee:  
Jerry Way  
Director of Public Works  
City of Sacramento, Department of Public Works  
915 "I" Street, Room 2000 Sacramento, CA 95814  
(916) 808-6381  
jway@cityofsacramento.org

Notwithstanding section 13(c) of this Attachment, the Grantee may update contact information listed in this paragraph by written notice (formal letter) to the Government without the need for a formal amendment to this Agreement.

c) Project Description and Milestones

- 1) Project Description: The Grantee shall furnish all personnel, facilities, and equipment, and other materials and services (except as otherwise specified herein) necessary to perform the approved Project, as set forth in the Statement of Work and the Estimated Project Schedule (Attachment 2), the Approved Project Budget (Attachment 3), and in accordance with the representations, certifications, and assurances set forth in the Grantee's Application, incorporated herein and made a part hereof. In the event of a conflict, in describing the Project, between the Grantee's Application and the Statement of Work, the Statement of Work will govern.
- 2) Term: Unless sooner terminated in accordance with its terms, this Agreement shall be valid for the time period indicated on the Grant/Cooperative Agreement (page 1), sections 4 and 5. This time period includes the period for both completion of the Project, and completion and submission of any reports or deliverables required by this Agreement.
- 3) State and Local Planning:  

Planning Program Date: (N/A)
- 4) Environmental Approvals and Processes:

Environmental Documentation Type, Titles, and Date: "Federal Railroad Administration Finding of No Significant Impact for the Sacramento Intermodal Transportation Facility" FONSI, 3/15/10

Environmental Decision Type and Date: FONSI, 3/15/10

Name of Agency and Office Approving Each Environmental Decision Document: U.S. Department of Transportation, Federal Highway Administration; The State of California, Department of Transportation

Planned Completion of NEPA: N/A

5) Project Schedule:

Planned or Actual Contract Award Date (if applicable): 2/15/2013

Planned or Actual Construction Start Date: 11/2013

Planned Project Completion Date: 11/2016

Planned Completion of Final Design: 6/20/2013

d) Project Funding

1) FY 2012 TIGER Discretionary Program Funding:

The total not-to-exceed amount of Federal funding that is provided under this Agreement is identified on the Grant/Cooperative Agreement (page 1) sections 10 and 11. The FRA's liability to make payments to the Grantee under this Agreement is limited to those funds obligated under this Agreement as indicated above and any subsequent amendments.

2) FY 2012 Non-TIGER Financial Commitment (if any):

- A. The Grantee hereby commits and certifies that it will provide funds (and ensure the availability of other sources of funding, such as local/private funding or in-kind contributions) in an amount sufficient, together with the Federal contribution (acknowledging the limitations as set forth in this Agreement), to assure timely and full payment of the Project costs as necessary to complete the Project.
- B. The Grantee agrees to notify the FRA within 14 calendar days of any change in circumstances or commitments that adversely affect the Grantee's plan to fund the Project costs necessary to complete the Project as set forth in the Grantee's Application. In its notification, the Grantee shall advise the FRA of what actions it has taken or plans to take to ensure adequate funding resources and shall reaffirm its commitment to the FRA as set forth in subsection (A) of this section 4(d)(2). The FRA is not responsible for any funding shortfalls regarding the FY 2012 non-TIGER grant amount share. The FY 2012 TIGER Discretionary Grant Amount will remain unchanged (See section 13 of this Attachment to the Agreement regarding termination).

3) Grant Funds and Sources of Project Funds:

- A. The total estimated cost of the Project (as set forth in the Approved Project Budget) is \$ 30,000,000.
- B. FRA funding assistance under the FY 2012 TIGER Discretionary Grant Program is limited to an estimated 50.0000% of the total estimated cost for completing the Project, but not greater than \$ 15,000,000. If there are any cost savings, or if the contract award is under the engineer's estimate, the Grantee's funding amount and percentage share may be reduced, provided that the Grantee's share of the costs under the Act may not be reduced below 20% for urban area projects.
- C. Grantee funding assistance (including all sources other than that provided in (B) above, which may include other Federal funds, state funds, local funds, or other contributed funds) is estimated to be 50.0000% of the total cost of the Project. Consequently, of the amount specified in subparagraph (A) of this subsection, Grantee funding is estimated to be \$ 15,000,000. If there are any cost savings, or if the contract award is under the engineer's estimate, the Grantee's funding amount and percentage share may be reduced, provided that the Grantee's share of the costs under the Act may not be reduced below 20% for urban area projects.
- D. When requesting payment, the Grantee must identify: (1) the total amount of costs for which funding is requested; (2) Grantee funding assistance applied to the Project; and (3) the balance of federal assistance dollars requested for payment.
- E. Funding responsibility for the Project under this Agreement is recapped as follows:

<b>FRA Funding Assistance</b>	<b>+</b>	<b>Grantee Cash Contribution</b>	<b>+</b>	<b>Grantee In-Kind</b>	<b>=</b>	<b>Total Project Funding</b>
\$15,000,000.00	+	\$15,000,000.00	+	\$0.00	=	\$30,000,000.00

- F. FRA hereby authorizes the incurrence of pre-agreement costs by the Grantee on or after February 1, 2013 in anticipation of Agreement award, but such costs are allowable only to the extent that they are otherwise allowable under the terms of this Agreement.

**SECTION 5. REIMBURSEMENT OF PROJECT COSTS**

Pursuant to 49 C.F.R. 18.21(d) or 19.22(e), as applicable, the Grantee may request reimbursement of costs incurred in the performance hereof as are allowable under the applicable cost provisions, not-to-exceed the funds currently available as stated in this Agreement, and in

accordance with the provisions of section 4(d)(3) of Attachment 1. The Grantee shall submit an electronic copy of SF 270, no more frequently than monthly, to the FRA contact person identified in section 4(b) of this Attachment 1.

- a) **Requests for Reimbursement:** When requesting reimbursement of costs incurred, the Grantee shall submit supporting cost detail with the SF 270 to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, and travel. The FRA contact person identified in section 4(b) of this Attachment 1 reserves the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without review and approval by the FRA contact person identified in section 4(b) of this Attachment 1 to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, the FRA contact person identified in section 4(b) of this Attachment 1 will certify and forward the request for reimbursement to the payment office.
- b) **Payment of FRA funding through FRA's Office of Financial Services,** shall be made on a reimbursable basis whereby the Grantee will be reimbursed, after the submission of proper invoices, for actual expenses incurred.

The Grantee will use the Automated Clearing House (ACH) Electronic Vendor Payment method for transfer of reimbursed funds and submit a SF-270 form. Requests for reimbursement must be made through the Department of Transportation's Delphi eInvoicing System. Information on the Delphi eInvoicing System can be found at: <http://www.dot.gov/cfo/delphi-einvoicing-system.html>. To obtain access to the Delphi eInvoicing System, please contact your grant Administrative Officer or Grant Manager.

- c) To seek reimbursement from the Government, the Grantee shall submit, on a monthly basis, documentary evidence of all obligations associated with the Project set forth in this Agreement, and set forth the breakdown of those Project costs (those to be covered by the Federal FY 2012 TIGER Discretionary Grant Program contribution, and those to be covered by all sources other than the FY 2012 TIGER Discretionary Grant Program, which may include other Federal funds, state funds, local funds, or other contributed funds). The FRA will reimburse the Grantee upon request for all valid expenses (FY 2012 TIGER Discretionary Grant Program share of Project costs), upon FRA's acceptance of such documentation. All reimbursement requests to the Government shall be supported by sufficient documentation to justify reimbursement of the Grantee, including invoices and proof of payment of an invoice.
- d) The Grantee shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government.
- e) The Grantee shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or the like.
- f) Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
- g) **Financial Management System:** By signing this agreement, the Grantee verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs, and that it complies with the financial management system requirements

of 49 C.F.R. Part 18 or Part 19, as applicable. The Grantee's failure to comply with these requirements may result in Agreement termination.

h) Allowability of Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., OMB Circular A-87 (2 C.F.R. Part 225). Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

## **SECTION 6. RESPONSIBILITY AND AUTHORITY OF THE GRANTEE**

a) Legal Authority. The Grantee affirms that it has the legal authority to apply for the grant, and to finance and carry out the proposed project identified in its Technical Application; that a resolution, motion or similar action has been duly adopted or passed as an official act of the Grantee's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Grantee to act in connection with the application and to provide such additional information as may be required.

b) Funds Availability. The Grantee affirms that it has sufficient funds available for that portion of the Project costs that are not to be paid by the Government. The Grantee also affirms that it has sufficient funds available to assure operation and maintenance of items funded under the Agreement that it will own or control.

c) Preserving Rights and Powers. The Grantee will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the Agreement without the written approval of the Government, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Grantee. The Grantee agrees that this will be done in a manner acceptable to the Government.

d) Accounting System, Audit and Record Keeping Requirements.

1. The Grantee agrees to keep all project accounts and records that fully disclose the amount and disposition by the Grantee of the proceeds of the grant, the total cost of the Project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the Project supplied by other sources, and such other financial records pertinent to the Project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. 7501-7507).

2. The Grantee agrees to make available to the DOT and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the Grantee that are pertinent to the grant. The Government may require that a Grantee conduct an appropriate audit. In any case in which an independent audit is made of the accounts of a Grantee relating to the disposition of the proceeds of a grant or relating to the Project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

e) Minimum Wage Rates. The Grantee shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Agreement that involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

f) Foreign Market Restrictions. The Grantee will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

h) Relocation and Real Property Acquisition. (1) The Grantee will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 C.F.R. Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) The Grantee will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 C.F.R. Part 24. (3) The Grantee will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 C.F.R. Part 24.

## **SECTION 7. LABOR REQUIREMENTS**

a) The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-055, Nov. 18, 2011), regarding National Infrastructure Investments (the "Act") (referred to as "FY 2012 TIGER Discretionary Grants" or "TIGER Discretionary Grants") requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code.

b) Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 C.F.R. Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 C.F.R. 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

c) Federal agencies providing grants, grant agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

d) For additional guidance on the wage rate requirements of the Act, contact your awarding agency. Recipients of grants, grant agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## **SECTION 8. TRANSPARENCY ACT REQUIREMENTS**

### **[THIS SECTION MAY BE UPDATED BASED ON FURTHER OMB GUIDANCE OR REGULATION]**

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252, hereafter referred to as “the Transparency Act” or “the Act”) and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 C.F.R. Part 170), the Grantee is required to report as required under the Act, in addition to including the following clause in all first-tier Subawards:

#### **I. Reporting Subawards and Executive Compensation.** **a. Reporting of First-Tier Subawards.**

1) **Applicability.** Unless the Grantee (hereinafter in this section referred to as “you”) are exempt as provided in paragraph d. of this section, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in subsection e. of this section).

#### **2) Where and when to report.**

a. You must report each obligating action described in subsection a.1. of this section to <http://www.fsrs.gov>.

b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

#### **b. Reporting Total Compensation of Recipient Executives.**

1) **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a. the total Federal funding authorized to date under this award is \$25,000 or more;

b. in the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2) Where and when to report. You must report executive total compensation described in subsection b.1. of this section:

a. As part of your registration profile at <http://www.ccr.gov>.

b. By the end of the month following the month in which this award is made, and annually thereafter.

**c. Reporting of Total Compensation of Subrecipient Executives.**

1) Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

a. in the subrecipient's preceding fiscal year, the subrecipient received—

(1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2) Where and when to report. You must report subrecipient executive total compensation described in subsection c.1. of this section:

a. To the recipient.

b. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

**d. Exemptions.**

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

a. Subawards,

and

b. The total compensation of the five most highly compensated executives of any subrecipient.

**e. Definitions. For purposes of this section:**

1) Entity means all of the following, as defined in 2 C.F.R. Part 25:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization;

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2) Executive means officers, managing partners, or any other employees in management positions.

3) Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. — .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4) Subrecipient means an entity that:

a. Receives a subaward from you (the recipient) under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. 229.402(c)(2)):

a. Salary and bonus.

b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

e. Above-market earnings on deferred compensation which is not tax-qualified.

f. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

#### **SECTION 9. SINGLE AUDIT INFORMATION FOR RECIPIENTS OF TIGER DISCRETIONARY GRANT FUNDS**

a) To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 C.F.R. 215.21 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations" and OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments." Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of TIGER Discretionary Grant funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "FY 2012 TIGER -" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

## SECTION 10. REPORTING

Subject to the Paperwork Reduction Act, and consistent with the purposes of the FY 2012 TIGER Discretionary Grant Program, the Grantee agrees to collect data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending. The Grantee further agrees to submit periodic reports to the Government that contain data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending.

a) Project Outcomes and Performance Measurement Reports. The Grantee shall collect the data necessary to track and report on each of the performance measures identified in the Performance Measurement Table in Attachment 4, and report results of the data for each measure to the Government periodically, according to the reporting schedule identified in Attachment 4. Furthermore, the Grantee agrees to provide an initial Pre-project Report and a final Project Outcomes Report to the Government. The Pre-project Report shall consist of current baseline data for each of the performance measures specified in the Performance Measurement Table in Attachment 4. The Pre-project Report shall include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. The Grantee shall submit the report to the Government before initiating work under this Agreement. The Grantee shall represent that the data in the Pre-project Report is current as of the date it is issued. The Grantee shall submit interim Project Performance Measurement Reports to the Government for each of the performance measures specified in the Performance Measurement Table in Attachment 4 following Project completion. The Grantee shall submit reports at each of the intervals identified for the duration of the time period specified in the Performance Measurement Table in Attachment 4. The Grantee shall represent that the data in each of the interim Project Performance Reports is current as of the final date of the reporting interval. The Project Outcomes Report shall consist of a narrative discussion detailing Project successes and/or the influence of external factors on Project expectations. The Grantee shall submit the Project Outcomes Report to the Government within 3 months of the end date of performance under this Agreement, which includes an *ex post* examination of Project effectiveness in relation to the Pre-project Report baselines. The Grantee shall represent that the data in the Project Outcomes Report is current as of the date it is issued. The Grantee shall submit each report via email to each of the Government contacts identified in section 4(b) of this Attachment 1 of this Agreement and, additionally, to [outcomes@dot.gov](mailto:outcomes@dot.gov). The email shall

reference and identify in the email subject line the TIGER Grant Number and provide the number of the Performance Measures report submitted.

b) Project Progress and Monitoring Reports. Consistent with the purposes of the FY 2012 TIGER Discretionary Grant Program, to ensure accountability and transparency in Government spending, the Grantee shall submit quarterly progress reports (January 1, April 1, July 1, October 1), and the Federal Financial Report (SF-425), as set forth in Section 14(h): to the Government on a quarterly basis, on the 30<sup>th</sup> of the month following the quarter being reported, until completion of the Project. The initial report shall include a detailed description, and, where appropriate, drawings, of the items funded. The Grantee shall submit all required reports and documents to the FRA contact person identified in Attachment 1, section 4(b), referencing the Agreement number, and through GrantSolutions in the case of the Federal Financial Report (SF-425).

c) Annual Budget Review and Program Plan. The Grantee shall submit an Annual Budget Review and Program Plan to the Government via e-mail 60 days prior to the end of each Agreement year. The Annual Budget Review and Program Plan shall provide a detailed schedule of activities, estimate of specific performance objectives, include forecasted expenditures, and schedule of milestones for the upcoming Agreement year. If there are no proposed deviations from the Approved Project Budget, Attachment 3, the Annual Budget Review shall contain a statement stating such. The Grantee will meet with the Government to discuss the Annual Budget Review and Program Plan. If there is an actual or projected Project cost increase, the annual submittal should include a written plan for providing additional non-TIGER Discretionary Grant sources of funding to cover the Project budget shortfall or supporting documentation of committed non-TIGER Discretionary Grant funds to cover the cost increase.

d) Closeout Process. Closeout occurs when all required Project work and all administrative procedures described in Title 23 (or 49 C.F.R. part 18 or part 19, as applicable) are completed, and the Government notifies the Grantee and forwards the final Federal assistance payment, or when the Government acknowledges Grantee's remittance of the proper refund. Within 90 days of the Project completion date or termination by the Government, the Grantee agrees to submit a final Financial Status Report (SF-425), a certification or summary of Project expenses, and third-party audit reports.

## **SECTION 11. SPECIAL GRANT REQUIREMENTS**

a) Except as otherwise provided herein, the Grantee shall ensure the maintenance of Project property to the level of utility (including applicable FRA track safety standards) which exists when the Project improvements are placed in service (as set forth in the Statement of Work (Attachment 2) for a period of twenty (20) years from the date such Project property was placed in service. In the event the Grantee fails to maintain project property as required by this section for a period of time in excess of six (6) months, the Grantee will refund to the Government a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such original default.

b) The Grantee acknowledges that the purpose of the Project is to benefit railroad transportation. In the event that all intercity passenger rail service making use of the Project property is discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project property was placed in service, as set forth above, and if such intercity passenger rail service is not reintroduced during a one (1) year period following the date of such discontinuance, the Grantee shall refund to the Government, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.

## **SECTION 12. ASSURANCES AND CERTIFICATIONS**

The Grantee will ensure compliance with the standard FY 2012 TIGER grant program assurances and certifications, attached hereto as Attachment 5 and made a part hereof.

## **SECTION 13. TERMINATION, EXPIRATION, AND MODIFICATION**

a) Subject to terms set forth in this Agreement, the Government reserves, in its sole discretion, the right to terminate this Agreement, and all of its obligations with this Agreement, unless otherwise agreed to in a signed writing between the Grantee and the Government, if any of the following occurs:

- 1) The Grantee fails to obtain or provide any non-FY 2012 TIGER Discretionary Grant Program contribution or alternatives approved by the Government, in accordance with section 4(d) of Attachment 1 of this Agreement;
- 2) The Grantee fails to begin construction before November 2013;
- 3) The Grantee fails to begin expenditure of Grant funds by September 2014;
- 4) The Grantee fails to meet the conditions and obligations specified under this Agreement, including, but not limited to, a material failure to comply with the Project Schedule, after giving the Grantee a reasonable opportunity to cure such failure;
- 5) The Government determines that the public objectives of the Project cannot be accomplished.

b) Funds made available under this Agreement are required to be obligated by the Government on or before September 30, 2013. Funds made available under this Agreement, once obligated, are available for liquidation and adjustment through September 30, 2018, the "Grant Termination Date." Unless otherwise agreed to by the parties, this Agreement shall terminate on the Grant Termination Date.

c) Either party (the Government or the Grantee) may seek to amend or modify this Agreement prior to the Grant Termination Date by written notice (formal letter) to the other party and in accordance with 49 C.F.R. Parts 18.43 and 18.44. The Grant Agreement may be

amended or modified only on the mutual written agreement by both parties. Changes to Attachments 3 and 4 (Estimated Project Schedule and Approved Project Budget) do not require modification through the process in this paragraph if such modifications do not affect the dates or amounts in sections 4(c)(4) and (5) and 4(d)(3) of Attachment 1 of this Agreement, and the change has been consented to by the Government in writing consistent with the requirements of the administering Operating Administration (including by e-mail).

#### **SECTION 14. QUARTERLY PROGRESS REPORTING REQUIREMENTS—FORMAT AND CONTENT**

- a) The purpose of the calendar quarterly progress reports under the Agreement for the TIGER Discretionary Grants program is to ensure that the project budget and schedule will be maintained to the maximum extent possible, that the project will be completed with the highest degree of quality, and that compliance with Federal regulations will be met. To that end, along with the quarterly progress, as outlined below, the Grantee should also submit a Federal Financial Report (SF-425) with each quarterly progress report.
- b) The Grantee should develop a project reporting and tracking system to collect, assess and maintain project status information and data that is timely, independent, and accurate. This system should provide current information on project prosecution, progress, changes, and issues. This information should be used to identify trends and forecast project performance and to identify and proactively address challenges to eliminate major project surprises.
- c) The need to continuously and accurately report cost increases; schedule changes; deficient quality items; and the causes, impacts, and proposed measures to mitigate these issues is paramount to effectively managing, administering, and protecting the public investment in the project. Any apparent reporting deficiencies or questionable data should be completely resolved. Ultimately, the Grantee and the Government must be fully aware of the complete status of the project, and therefore be in a position to take appropriate action if necessary.
- d) A quarterly cost, schedule, and status report will be produced by the Grantee, and a quarterly status meeting will be held with the Grantee, the Government and other applicable agencies in attendance. The quarterly status meetings should discuss the project costs, schedules, quality issues, compliance with Federal requirements, and other status items in sufficient enough detail to allow all involved parties to be fully aware of the significant status issues and actions planned to mitigate any adverse impacts. In addition, significant issues occurring between status meetings must be communicated immediately without waiting for the next regularly scheduled meeting, with any highly significant or sensitive issues elevated immediately to the executive leadership.
- e) The following is the required format for the quarterly progress reports. At the discretion of the Government, modifications or additions can be made in order to produce a quarterly reporting format that will most effectively serve both the Grantee and the Government. It is recognized that some projects will have a more extensive quarterly status than others. In the case of smaller projects, the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. Please note that the initial quarterly progress

report should include a detailed description, and where appropriate, drawings, of the items funded.

**(a) Executive Summary.** The executive summary should be a clear and concise summary of the current status of the project, including any major issues that have an impact on the project's scope, budget, schedule, quality, or safety. It may be done in a bulleted format. The following summary information is an example of items that should be covered in the executive summary section:

- Current total project cost (forecast) vs. latest budget vs. baseline budget. Include an explanation of the reasons for any deviations from the approved budget.
- Current overall project completion percentage vs. latest plan percentage.
- Any delays or exposures to milestone and final completion dates. Include an explanation of the reasons for the delays and exposures.
- A summary of the projected and actual dates for notices to proceed for significant contracts, start of construction, start of expenditure of TIGER Discretionary Grant funds, and project completion date. Include an explanation of the reasons for any discrepancies from the corresponding project milestone dates included in the Agreement.
- Any Federal obligations and/or TIFIA disbursements occurring during the month versus planned obligations or disbursements.
- Any significant contracts advertised, awarded, or completed.
- Any significant scope of work changes.
- Any significant items identified as having deficient quality.
- Any significant safety issues.
- Any significant Federal issues such as environmental compliance, Buy America/Buy American (whichever is applicable to this Project), Davis Bacon Act Prevailing Wage requirements, etc.

**(b) Project Activities and Deliverables.** The purpose of this section is to: (1) highlight the project activities and deliverables occurring during the previous quarter (reporting period), and (2) define the activities and deliverables planned for the next two reporting periods. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance. The two reporting period "look ahead schedule" will enable the Government to accommodate any activities requiring input or assistance.

**(c) Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. In general, issues and administrative requirements that could have a significant or adverse impact to the project's scope, budget, schedule, quality, safety, and/or compliance with Federal requirements should be included. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

**(d) Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Grantee and the Government. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

**(e) Project Cost.** An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for

cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or TIFIA disbursements for the project, compared to planned obligations and disbursements.

**(f) Project Funding Status.** The purpose of this section is to provide a status report on the non-TIGER Discretionary Grant funds necessary to complete the project. This report section should include a status update of any legislative approvals or other actions necessary to provide the non-TIGER Discretionary Grant funds to the Project. Such approvals might include legislative authority to charge user fees or set toll rates, or the commitment of local funding revenues to the project. In the event that there is an anticipated or actual project cost increase, the project funding status section should include a report on the anticipated or actual source of funds to cover the cost increase and any significant issues identified with obtaining additional funding.

**(g) Project Quality.** The purpose of this section is to: (1) summarize the Quality Assurance/Quality Control activities during the previous month (reporting period), and (2) highlight any significant items identified as being deficient in quality. Deficient items noted should be accompanied by reasons and specifics concerning the deficiencies, and corrective actions taken or planned. In addition, the agency or firm responsible for the corrective action should be documented. Planned corrective actions should then be included as Action Items/Outstanding Issues.

**(h) Federal Financial Report (SF-425).** The Federal Financial Report (SF-425) (available at [http://www.whitehouse.gov/sites/default/files/omb/assets/grants\\_forms/SF-425.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/grants_forms/SF-425.pdf)) is a financial reporting form used throughout the Federal Government Grant system. The Grantee shall submit the Federal Financial Report (SF-425) on a quarterly basis throughout the lifecycle of the grant. Reports are due 30 days from the close of the calendar quarter and should be

submitted online through GrantSolutions. Reports should be submitted in accordance with the form's instructions, requiring reporting of all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income. The final SF-425 is due within 90 days after the end of the award period, but may be submitted as soon as all outstanding expenditures have been completed.

**(i) Other Status Reports.** The Grantee and the Government may agree that other reports may be beneficial in ensuring that project status issues are fully and openly communicated. Such reports may include the public relations plan, value engineering and constructability review plan, environmental compliance report, and/or compliance with the Buy America requirements.

## ATTACHMENT 2

### STATEMENT OF WORK Sacramento Valley Station – Phase 2 Intermodal

#### 1. PROJECT ABSTRACT

The Sacramento Intermodal Phase 2 – Sacramento Valley Station (SVS) project (“the Project”) will create a state-of-the-art functional transportation facility. The Project will enable the Station to become a convenient, welcoming, efficient multimodal terminal and serve increased passengers and activities. The restored Station, located in the center of the region, will spark ridership and spur adjacent transit-oriented development. As a result of the Project, this nationally-listed historic Station will be well-equipped and well-positioned for its second century of operation. Ridership is projected to increase approximately 6 percent over baseline levels; transportation modes serving the Station will expand and connect more efficiently. Over 26,000 square feet of transit-oriented development at the site will create approximately 60 long term jobs.

Through this Cooperative Agreement (Agreement), the City of Sacramento (Grantee) will construct the amenities and conveniences for passengers as described in Section 5 below that make it easier to use transit; augment mobility and modal opportunities; reduce life-cycle costs; and, extend the life of this unique real estate asset. By opening up long-closed areas and reconnecting spaces, new development and long-term jobs can be created, which will result in increased ridership. Incorporating bicycle facilities with secure parking and services will benefit current and new riders and the environment.

#### 2. BACKGROUND

The Project constitutes the second phase of the Sacramento Intermodal Transportation Facility (SITF), which is planned in three independent phases. The Phase 1 of the SITF, known as Track Relocation, involved the realignment and straightening of over 3300 linear feet of tracks north of the existing Station. The Track Relocation resulted in 2 new mainline tracks, 4 station tracks, with equipment; passenger platforms, walkways, plazas and 3 tunnels for passengers, rail services and pedestrians and bicyclists; site remediation; and, utilities/services. Two Federal Railroad Administration (FRA) grants partially funded this \$70 million Phase 1 construction project. A \$6.2 million High-Speed Intercity Passenger Rail (HSIPR) grant contributed to track and rail construction costs, while a \$2.092 million Rail Relocation grant supplied funds for 2 crossovers and 5 turnouts at the passenger platforms. Although construction is still ongoing, the new track and platforms became operational in August 2012, and the Phase 1 is anticipated to be complete by early 2013.

Phase 2 is focused on the rehabilitation of the SVS. Since first opening in 1926, the SVS has served as the rail hub of the region. Today, the station maintains its regional and economic importance and is the seventh busiest passenger rail station in the nation serving 42 trains and 4,700 passengers daily. To maximize its transportation role and better leverage its location,

opportunities and functions, the station requires upgrades and expansion to fully become the heart of a 21<sup>st</sup> Century urban transit center. At present, its facilities are in poor condition and require extensive repair and reallocation of building functions for modern efficiency. Most of the building systems have outlived their useful life and many interior spaces do not meet modern building codes and cannot be occupied. Many architectural features are damaged and need to be restored or rehabilitated. The allocation of space and services are insufficient for current operations and lack efficient pedestrian connections to adjacent areas, such as downtown Sacramento.

Currently, Sacramento's multimodal service includes heavy rail (Amtrak's California Zephyr and Coast Starlight and Capitol Corridor and San Joaquin Intercity Services); Sacramento Regional Transit (RT) light rail and buses; intercity buses, taxis and bicycles; and park and ride facilities. The SVS site is also located along the alignment of the (through-routed) Union Pacific Railroad (UPRR) freight lines.

The proposed Phase 2 renovations, coupled with transit facilities improvements (Phase 1), will serve Sacramento and its ridership well for the foreseeable future. However, with statewide ridership and system expansion projections of continued growth, the City is anticipating a response to the additional capacity needs above what the SVS will be able to accommodate. Phase 3 of the SITF will create additional building space and function to service future needs.

### **3. PROJECT OBJECTIVES**

To complete the Project, the Grantee will rehabilitate the historic 1926 Station. The work will consist of both interior and exterior improvements including:

- reconfiguration of spaces to improve passenger flow, functional efficiencies and space usage;
- new bicycle services facility to accommodate 100 new bikes;
- new plaza facility to accommodate dining areas and cafes for passenger convenience;
- installation of modern, building systems for heating, cooling, plumbing, electrical, lighting, way-finding and communications;
- repair of deteriorated elements; and
- Restoration and rehabilitation of historic architectural features.
- Architectural lighting to showcase the building's nighttime civic beauty

Consistent with the Programmatic Agreement executed in 2009, the work will be performed in accordance with the US Secretary of Interior's Standards for Rehabilitation since the building is listed on the National Register of Historic Places, California Register of Historical Resources and Sacramento Register of Historic and Cultural Resources.

### **4. PROJECT BENEFITS**

The Project will provide immediate, long-lasting transportation benefits for existing passengers and operators. The Project will focus on work to make the Station more convenient and usable

for passengers; more functional and efficient for operators; more hospitable, and open to passengers; more attractive and enriching as a public space; and more sustainable and safe. By increasing the building's usable lease area, rents received will provide means to maintain the transportation facility.

Renovating the SVS will enhance it as a transportation hub with additional transportation related services; it will provide new office space, retail space, and community gathering space in the heart of Downtown to support commercial activities of private businesses and the activities of local, State and Federal agencies. More than 20,000 square feet of new leasable office, retail, transportation and food services space will be available once the rehabilitation is complete.

The addition of bicycle facilities incorporating 100 bicycle parking spaces, with potential for rental, repair, and retail services will expand transportation facilities and amenities in the Depot, increasing use of bicycles to and from the SVS. The lack of secure, safe bicycle parking is a major impediment to bicycling and has led to a disproportionate number of SVS bicyclists using on-train storage. The bicycle facilities will benefit current SVS bicyclists and encourage existing auto users to shift to bicycling.

## **5. SCOPE OF ACTIVITIES**

### **A. Geographical and Physical Boundaries**

The Project boundaries are the physical building footprint of the SVS along with area of the perimeter walkway and parking requiring upgrades to meet accessibility requirements. The Project also includes a small area on the station's north side that has been identified for a new plaza area for dining and seating (see description above). There may also be some geothermal investigations on the property related to the utility upgrades that are part of the Project.

### **B. Environmental Determination**

The federal environmental review for the Project is complete. It was conducted as part of the SITF Environmental Assessment where the Federal Highway Administration (FHWA) was the lead agency. FHWA and FRA, in 2009 and 2010 respectively, issued Findings of No Significant Impact (FONSI) covering the Project. The California Department of Transportation (Caltrans), City of Sacramento, and the Federal Transit Administration (FTA) also cooperated on the environmental clearance of the Project.

A Programmatic Agreement among the cooperating agencies and the California State Historic Preservation Office was executed in 2009, for compliance with Section 106 of the National Historic Preservation Act, for the SITF. The City of Sacramento adopted a Master Certificate of Compliance for rehabilitation projects at the Depot to approve work done in compliance with the US Secretary of the Interior's Standards for Rehabilitation. This has applicability for the majority of the scope of the Project, especially work that brings the building up to current standards and rehabilitation of historic features.

The Environmental Assessment, Programmatic Agreement and FONSI are available at:

[http://www.cityofsacramento.org/transportation/engineering/railyards/downloads/TIGER/FHWA\\_Final\\_EA\\_Signed\\_FONSI.pdf](http://www.cityofsacramento.org/transportation/engineering/railyards/downloads/TIGER/FHWA_Final_EA_Signed_FONSI.pdf)

[http://www.cityofsacramento.org/transportation/engineering/railyards/downloads/TIGER/FRA\\_FONSI\\_Sacramento\\_Intermodal\\_Signed.pdf](http://www.cityofsacramento.org/transportation/engineering/railyards/downloads/TIGER/FRA_FONSI_Sacramento_Intermodal_Signed.pdf)

<http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/documents/SacIntermode-Transportation.pdf>

Environmental review pursuant to the California Environmental Quality Act (CEQA) is complete. The Project is included within the City's Railyards Specific Plan area. On December 11, 2007, the Sacramento City Council approved the Railyards Specific Plan, certified the Environmental Impact Report (EIR) (SCH#2006032058) for the plan and adopted the mitigation monitoring plan (MMP). The Project activities covered under this Agreement are analyzed in the EIR. The MMP that will be carried out during Project construction includes required best management practices and other measures to minimize environmental effects.

#### **C. Description of Work (add Subtasks if required)**

Work for the Project is broken into three major tasks, described below, which will be further defined as the Grantee progresses the Project planning and design. All pre-construction activities will be completed by late-2013. Prior to the start of construction and consistent with the deliverable schedule included in the table below, the Grantee will provide updated schedule, budget, and Project design. Relevant construction permits or approvals from resource agencies will be obtained prior to the start of construction and made available to FRA upon request.

##### **Task 1.1 Pre-Construction Investigations**

The Grantee shall implement pre-Construction investigations which consist of the drilling of test bore(s) for a potential Geothermal well field to provide a source of heating and cooling for the SVS and may include additional activities identified through the Design and Cost estimate process. This Task only covers the drilling operation not any subsequent analysis for system design that will be completed with other funding sources. This investigation may or may not precede Task 1.2, depending on availability of drilling resources; however, it is preferred to have a determination of the testing at the earliest possible date. Any required analysis for system design from the well data will be carried by other funding sources.

##### **Task 1.2: Contractor Design Assist Contract**

The Grantee shall implement pre-Construction interface with a qualified general contractor. It is essential to coordinate historic elements and conservation needs along with the pre-planned sequencing of construction work to be coordinated with Amtrak operations and minimize impacts to passengers. The City of Sacramento will begin a qualification and selection process. FRA may choose to be involved consistent with 49 CFR 18.36(g)(3)(i).

##### **Task 1.3: Construction Start & Demolition**

The Grantee shall implement the site mobilization phase for construction site facilities and major demolition of areas of building for rehabilitation work and related activities. Building Permits will be obtained under this task (available to FRA upon request).

#### **Task 2.a: Exterior Repair & Rehabilitation**

The Grantee shall undertake all exterior repair and rehabilitation activities which include all exterior repairs of exterior façade elements, window rehabilitation, site work and underground utility work and related activities. Exterior repair may include repairing terra cotta, plaster, brick and concrete facades; the addition of patio plaza at north entry; replacing parking pay equipment; fix ground settlement problems; extending water mains; adding a fire hydrant; repairing roof drainage; fixing pile caps; modifying the existing passenger tunnel and glazed enclosure; and installing information and way-finding signage. Energy savings measures may include repairing glaze and restoration of fenestration (windows, doors and fixed glazing); and the addition of insulation.

#### **Task 2.b: Interior Repair & Rehabilitation**

The Grantee shall undertake all interior repair and rehabilitation activities which includes all interior work for new mechanical, electrical and plumbing systems, interior space build out, conveyance systems, Amtrak facilities and systems, mural and plaster restoration, interior finishes and hardware and related work. These improvements may include provision of heating, ventilation and air conditioning (HVAC), natural gas, mechanical, communications, lighting, and electrical systems; installation of elevators and restrooms; removal of hazardous materials; addition of security infrastructure; improvements to common areas; infrastructure for a bicycle center; modification of existing baggage ramp; provision of improved spaces to house additional and/or relocated transportation services, retail, eating establishments, offices and other future tenants; and provision of a space for community events and meetings. Historic rehabilitation improvements may include re-establishing uses and openings consistent with original locations, intent and current functions; removal of non-conforming work; investigation of historic materials, mural, paint and finishes for refurbishment; restoration of features in Waiting Room including original windows, sconces and chandeliers, travertine/marble flooring, wall finishes, benches and historic mural; and rehabilitation of other historic character-defining features.

#### **Task 3.0: Project Closeout**

The Grantee shall undertake all Project closeout activities including all building commissioning, including LEED commissioning, testing, warranties, maintenance and final documentation and final punch list and occupancy permit closure and related activities.

#### **D. Deliverables**

The following deliverables will be provided to FRA for acceptance.

#	Deliverable Name	Related Task	Estimated Completion Date
1	30% Design & Cost Estimate	Prior to Task 1	2/28/13
2	60% Design & Cost Estimate	Prior to Task 1	4/4/13
3	90% Design & Cost Estimate	Prior to Task 1	5/17/13
4	100% Design & Cost Estimate	Prior to Task 1	6/20/13
5	Updated Project schedule & budget	At 30%, 60%, 90% and 100% deliverables	see dates above
6	Record Set of Drawings	At Construction Final	6/20/13

## 6. PROJECT SCHEDULE

### A. Period of Performance

The period of performance for the work described above shall be approximately 40 months, beginning 2/15/13 and ending 11/30/2016.

### B. Schedule of Work

#	Task Name	Estimated Start Date	Estimated End Date
1.1	<b>2nd Quarter FY2013: Pre-Construction Test Bore for Geothermal System</b>	February 2013	March 2013
1.2	<b>Contractor Design Assist - Award contract</b>	February 2013	March 2013
1.3	<b>1st Quarter FY 2014: Construction Start &amp; Demolition</b>	September 2013	November 2013
	Contract Award Notice to Proceed	August 2013	September 2013
	Insurance/Submittals/Schedule	September 2013	October 2013
	Mobilization	September 2013	October 2013
	Demolition	September 2013	November 2013
2A	<b>1st Quarter FY 2014: Exterior Repair &amp; Rehabilitation</b>	September 2013	September 2014
	Replace Existing Waste Lines	September 2013	December 2013
	Replace Existing Water Lines	September 2013	December 2013
	Install Fire Hydrants	May 2014	June 2014
	Install Emergency Generator	June 2014	August 2014

#	Task Name	Estimated Start Date	Estimated End Date
	Install East Elevator	August 2013	February 2014
	Repair Structural Pile Foundation	December 2013	January 2014
	Repair Building Facades	April 2014	September 2014
	Brick Repointing	May 2014	July 2014
	Historic Site & Monument Lighting	June 2014	August 2014
	Repair Windows	April 2014	November 2014
	Repair Main Entry Sidewalk	April 2014	July 2014
	Plaster Repair & Repainting	June 2014	July 2014
	Install Parking Ticket Dispensers	July 2014	August 2014
<b>2B</b>	<b>2nd Quarter FY 2014: Interior Repair &amp; Rehabilitation</b>	<b>December 2013</b>	<b>December 2015</b>
	Install Network & Power Distribution	December 2013	March 2014
	AMTRAK Offices 2nd & 3rd Floors	December 2013	April 2014
	Build-out 2nd Floor Office Areas	December 2013	June 2014
	Restore Historic Restrooms and Hallways	February 2014	May 2014
	AMTRAK Data & Communication Review 1	March 2014	May 2014
	2nd Floor AMTRAK Admin. & Crew Relocation	May 2014	June 2014
	Remodel AMTRAK Crew Space to Retail	June 2014	August 2014
	New AMTRAK Ticket Office & Temp Baggage	September 2014	November 2014
	AMTRAK Data & Communication Review 2	November 2014	December 2014
	Relocate AMTRAK Ticket & Temp Baggage	December 2014	December 2014
	Remodel Existing Baggage Area	December 2014	January 2015
	AMTRAK Data & Communication Review 3	January 2015	February 2015
	Relocate AMTRAK Baggage	February 2015	February 2015
	Remodel Temporary Baggage to Retail	February 2015	April 2015
	Remodel Main Lobby	April 2015	July 2015
	Mural Restoration	June 2015	July 2015
	Infrastructure to accommodate Bicycle Rental, Café & Dining Patio North	July 2015	November 2015

#	Task Name	Estimated Start Date	Estimated End Date
	Community Room	July 2015	December 2015
3	<b>2nd Quarter FY 2016: Project Closeout</b>	December 2015	November 2016
	Commissioning	December 2015	January 2016
	Punchlist	January 2016	February 2016
	"Warranties, O&M's"	January 2016	February 2016
	As-Built Documentation	February 2016	March 2016
	Occupancy Permit Closure	March 2016	May 2016
	Draft Project Report	May 2016	September 2016
	Final Project Report	September 2016	November 2016

## 7. PROJECT COORDINATION

### Project Partners, Sub-Awardees, and/or Sub-Grantees

Type	Organization Name	Role/ Involvement
Matching Funds	Sacramento Transportation Authority (STA)	STA administers County Measure A Sales Tax for transportation improvements which are providing local match funds of \$15 million. The executed STA/City of Sacramento Agreement for matching funds is available to FRA upon request.
Transit Operator	Amtrak	Building Tenant, passenger rail service operator, and source of Performance Measure data. Not providing any Project funding.
Transit Agency	Capitol Corridor Joint Powers Authority (CCJPA)	Partner in bike facilities improvements, minor building tenant (potentially), and source of Performance Measure data. Not providing any Project funding.

## 8. PROJECT MANAGEMENT

If any Project management changes occur affecting the list of staff described below or the Project management process, the Grantee will provide FRA with an updated Project management plan and staff list.

### Internal Team Management Structure

1. Lead Agency – Office of the Director, Department of Public Works

2. Project Supervisor – Fran Halbakken, Office of the City Manager
3. Project Manager - Greg Taylor, AIA, LEED BD+C, Community Development Department
4. Project Architect – Dave Morgan, General Services Department
5. Additional Support Staff–
  - a. Bill Sinclair, Real Estate General Services;
  - b. Roberta Deering, Historic Preservation, Community Development;
  - c. Ron Yasui, Building PM for Railyards, Community Development
  - d. Hinda Chandler, Senior Architect, DPW coordination with Sacramento Intermodal Transportation Facility (SITF) in-progress work
  - e. Kevin Love, Construction Management, General Services
  - f. Pete Kroger, On-site supervision, General Services
  - g. Lucinda Wilcox, Project Funds
  - h. Jonathon Warren, Project Funds
  - i. Jerry Hicks, Attorney’s office
  - j. Gary Holm, DGS Operations/Maintenance
  - k. Flo Horton and Karen Shipley, Scheduling Assistance. Amber Delgado, Community Development Department (CDD) backup support
6. Depot Development Committee (DDC)– City Client Body for Program Development and Project Review
  - a. Greg Taylor, SVS-2 PM and DDC Chair
  - b. Fran Halbakken, City Manager’s (CM)Office
  - c. Bill Sinclair, Leasing, Real Estate
  - d. Roberta Deering, Historic Preservation
  - e. Hinda Chandler, SITF Coordination
  - f. Howard Chan/Matt Eierman, Parking Facilities
  - g. Gary Holm, Department of General Services, Operations/Maintenance
  - h. Brian Reilly, DGS Sustainability
  - i. James Christianson, Electrical

**Division of Responsibility**

**Project Manager – Greg Taylor**

- § Responsible for project scope, schedule, budget
- § Reviews and approves invoices, contracts
- § Executes contracts and approvals
- § Coordination with Consultant Project Manager.
- § Responsible for making project related decisions
- § Team coordination and oversees team meetings
- § Reports to Railyards Coordinator
- § Reports to Council
- § Prepares quarterly reports
- § Coordinates with TIGER Grant administrator
- § Meets monthly with accounting staff on budget
- § Primary contact for organizing, scheduling and conducting project meetings.
- § Responsible for coordination of facility user needs including Amtrak, Capitol Corridor Joint Powers Authority
- § Chairs DDC
- § Responsible for Project Communications – Public, Council, CM Office

Project Architect – Dave Morgan

- § Provides recommendations to Project Manager with supporting documentation for decision and implementation on technical issues.
- § Develops additional work scope contracts for review and approval by Project Manager for technical support work
- § Oversee LEED coordination with Commissioning Agent
- § Oversees consultant construction documentation and specifications and makes scheduled reports to Project Manager
- § Oversees Plan Review with CDD PM
- § Reviews Construction Documents with Project Manager
- § Reviews Bid Documents with Project Manager
- § Oversees construction level project management.

Additional Staff Support

- § Jose Ledesma, Contracts
- § Jerry Hicks, Contracts
- § Lucinda Wilcox & Jonathon Warren

- § Bill Sinclair – Primary need Program Phase and Schematic Design, continued support: Amtrak lease, DDC
- § Roberta Deering – All Phase review, DDC
- § Ron Yasui, CDD PM – minimal all phase until Design Development/Con Docs
  - Ed Short, Supervisor - Building Life/Safety
  - Jay Griffen, Life Safety Plan Check
  - Jeff Brooks, Plumbing, Mechanical
  - Mark Kolosky, Electrical
  - Tony Bertrand, Site Utilities
  - Eva Bravo, Development Engineering
  - Michael Bartley, Fire
- § Hinda Chandler – SIFT coordination and support all phases, DDC
- § Kevin Love, Construction Manager
- § Pete Kroger, Building Inspection DGS with agreement from CDD

## ATTACHMENT 3

### Project Budget

#### **PROJECT BUDGET**

The total estimated cost of the Project is \$30,000,000, for which this Agreement will contribute 50.0000% of the total cost, but no more than \$15,000,000. Any additional expense required beyond that provided in this grant to complete the Project shall be borne by the Grantee.

#### **A. Cost Summary**

<b>Project Cost by Task</b>				
#	Task Name	Federal Share	Grantee Share	Total Cost
1.0	FY 2013 3rd Quarter Start & Demolition	\$600,000	\$600,000	\$1,200,000
1.1	FY2012 Pre Construction- Test Well	\$9,500	\$9,500	\$19,000
1.2	Contractor Design Assist Fee with Cost estimating included	\$49,500	\$49,500	\$99,000
2A	FY 2013 3rd Quarter Exterior Construction	\$1,196,362	\$1,196,362	\$2,392,724
2B	FY 2013 4th Quarter Interior Construction	\$10,690,265.50	\$10,690,265.50	\$21,380,531
3	FY 2015 4th Quarter Project Closeout and overall project support costs)	See Itemized 3a-3d	See Itemized 3a-3d	See Itemized 3a-3d
3a	Consultant Services during construction	\$530,889.50	\$530,889.50	\$1,061,779
3b	Development and Building Fees	\$242,500	\$242,500	\$485,000
3c	City Construction Management & Inspections	\$442,800	\$442,800	\$885,600
3d	Change Orders	\$1,238,183	\$1,238,183	\$2,476,366
<b>Total Project Cost</b>		<b>\$15,000,000</b>	<b>\$15,000,000</b>	<b>\$30,000,000</b>

**B. Funding Sources**

<b>Project Cost by Funding Source</b>		
<b>Funding Source</b>	<b>Project Contribution Amount</b>	<b>Percentage of Total Project Cost</b>
<b>Federal Contribution</b>	\$15,000,000	50.0000%
<b>Non-Federal Contribution</b>	\$15,000,000	50.0000%
<b>TOTAL</b>	<b>\$30,000,000</b>	<b>100.0000%</b>

**Funding Source Details:**

The Grantee has secured non-Federal contributions through Measure 'A' Sacramento County Transportation Sales Tax (managed by Sacramento Transportation Authority (STA)). Bonds have been issued by STA and the City of Sacramento has executed an agreement for full funding (available to FRA upon request). Any change to this plan to secure the bond funds for contribution to the Project does not relieve the Grantee of its obligation to provide any non-Federal contribution under this Agreement.

ATTACHMENT 4

**Performance Measures**

Measure	Description of measure	Measurement Period	Reporting Period
<b>Transit passenger counts</b>	Transit passenger counts for a typical weekday (while schools are in session. Data, generated through survey, will be provided to the Grantee by Amtrak and Capitol Corridor JPA (CCPIA).	<p>Baseline Measurement: Coinciding with CCJPA biannual survey (see below) all Passenger data from Amtrak will be biannual (Dec. Jan. and June/July)</p> <p>Interim Performance Measures: Biannually with Annualized average of two survey periods for a period of 3 years after the project opens for revenue operations</p>	<p>Baseline Measurement: Report of combined Winter and Summer survey data by September 30, 2013.</p> <p>Interim Performance Measures: Report combined Winter and Summer survey data by the first September 30<sup>th</sup> date following project completion in March 2016.</p>
<b>Average monthly bike and/or pedestrian users at station.</b>	Capitol Corridor JPA (CCPIA) performs a Biannual Mode of Access Survey that determines the percentage split of access to each station.	<p>Baseline Measurement: CCJPA Winter survey occurs Dec. 2012 through Jan. 2013 and the Summer survey June – July 2013</p> <p>Interim Performance Measures: Biannually with Annualized average of two survey periods for a period of 3 years after the project opens for revenue operations</p>	<p>Baseline Measurement: Report of combined Winter and Summer survey data by September 30, 2013.</p> <p>Interim Performance Measures: Report combined Winter and Summer survey data by the first September 30<sup>th</sup> date following project completion in March 2016.</p>
<b>Facility Passenger Amenity Levels</b>	Grantee will survey passenger and amenities Amenities shall include passenger serving retail and food services. Services shall distinguish between fixed location and movable vendors such as carts or movable vending stalls. Survey components shall include the quantity, type, size and location relative to the main passenger flows and the reported revenue for each entity as reported to the City of Sacramento Revenue Division.	<p>Baseline Measurement: Report FY 2012 receipts</p> <p>Interim Performance Measures: Report Fiscal Year receipts annually for a period of 3 years beginning one year after the project opens for revenue operations</p>	<p>Baseline Measurement Report FY 2012 receipts by September 30, 2013.</p> <p>Interim Performance Measures: Report of Fiscal Year receipts by September 30, 2013, following project completion in March 2016.</p>



ATTACHMENT 5

**TIGER 2012 GRANT**  
**ASSURANCES AND CERTIFICATIONS**

**TITLE VI ASSURANCE**

**(Implementing Title VI of the Civil Rights Act of 1964, as amended)**  
**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED**  
**PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL**  
**FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2012 Discretionary Grant program, the Grantee hereby agrees that:

1. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, Grantee will comply with: Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d--42 U.S.C. 2000d-4; all requirements imposed by or pursuant to: Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; and other pertinent directives so that no person in the United States shall, on the grounds of race, color, national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Grantee receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, Section 21.7(a).
2. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, Grantee will comply with: Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, which prohibit discrimination on the basis of sex. As a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, it will comply with: the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101 et seq.), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541 et seq.); and any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and the requirements of any other nondiscrimination statute(s) which may apply to the Grantee.
3. As a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with: section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794); and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and Part 37, Transportation Services for Individuals With Disabilities; and Part 38, Americans With

Disabilities Act – Accessibility Specifications for Transportation Vehicles; and other pertinent directives so that no otherwise qualified person with a disability, be excluded from participation in, be denied the benefits of, be discriminated against by reason of such handicap, or otherwise be subjected to discrimination under any program for which the Grantee receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, Section 27.9.

4. The Grantee will promptly take any measures necessary to effectuate this Agreement. The Grantee further agrees that it shall take reasonable actions to guarantee that it, its contractors and subcontractors subject to the Department of Transportation regulations cited above, transferees, and successors in interest will comply with all requirements imposed or pursuant to the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.
5. These assurances obligate the Grantee for the period during which Federal financial assistance is extended. The Grantee agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.
6. These assurances are given for the purpose of obtaining Federal grant assistance under the TIGER 2012 Discretionary Grant Program and are binding on the Grantee, contractors, subcontractors, transferees, successors in interest, and all other participants receiving Federal grant assistance in the TIGER 2012 Discretionary Grant Program. The person or persons whose signatures appear below are authorized to sign this Agreement on behalf of the Grantee.
7. In addition to these assurances, the Grantee agrees to file: a summary of all complaints filed against it within the past year that allege violation(s) by the Recipient of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended; or a statement that there have been no complaints filed against it. The summary should include the date the complaint was filed, the nature of the complaint, the status or outcome of the complaint (*i.e.*, whether it is still pending or how it was resolved).

#### **DISCLOSURE OF LOBBYING ACTIVITIES**

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2012 Discretionary Grant program, the Grantee hereby agrees that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subgrantees shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN THE PERFORMANCE OF THE TIGER 2012 DISCRETIONARY GRANT PROGRAM**

The Grantee certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
  - (a) The dangers of drug abuse in the workplace;
  - (b) The Grantee's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs;
  - and,
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
  - (a) Abide by the terms of the statement; and
  - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
  - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
  - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the commitments made in this certification.
8. The Grantee may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**

**2 C.F.R. Part 1200, 49 C.F.R. Part 32**

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2012 Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
3. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. See Nonprocurement Suspension and Debarment (2 C.F.R. Part 1200) and Government wide Requirements for Drug-Free Workplace Grants (49 C.F.R. Part 32). The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
5. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant

may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

#### Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2012 Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2012 Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible,

or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**STANDARD SPECIFICATIONS**  
**FOR PUBLIC WORKS CONSTRUCTION**  
**(June 2007)**

The "Standard Specification for Public Works Construction (June 2007)" shall be limited to work located in the public right-of-way, and the construction of utility services through the property and connecting to any facilities located on the project site.

For the purposes of this contract the following definitions shall apply to the Standard Specifications:

1. Engineer shall mean City Representative.
2. Standard Specifications shall mean the Standard Specifications for Public Construction dated June 2007, and any subsequent amendments.

The following Sections of the Standard Specification shall apply to this project in addition to all other requirements in this Contract:

1. Section 1 - Definitions (except as otherwise provided in the Special Provisions);
2. Section 4 - Scope of Work (except as otherwise provided in the Special Provisions);
3. Section 5 - Control of Work and Materials;
4. Section 6 - Legal Relations and Responsibilities;
5. Section 7 - Prosecution and Progress;
6. Section 10 - Construction Materials (Excluding 10-39 through 10.54 inclusive);
7. Section 11 - Pre-Construction Photographs  
(in addition to other contract requirements);
8. Section 12 - Clearing and Grubbing, Tree Removal;
9. Section 13 - Existing Facilities;
10. Section 14 - Earthwork, Excavation, Embankment and Sub-Grade;
11. Section 15 - Water Use In Construction;
12. Section 16 - Dust Control;
13. Section 17 - Laying Aggregate Base;
14. Section 18 - Side Forms and Headers;
15. Section 19 - Portland Cement Concrete Pavement, Joints and Curing;
16. Section 20 - Concrete Structures;
17. Section 21 - Placing Steel Reinforcement;
18. Section 22 - Asphaltic Concrete;
19. Section 23 - Seal Coat-Armor Top;
20. Section 24 - Curbs, Gutters, Sidewalks, Gutter Drains;
21. Section 25 - Manholes and Flusher Branches;
22. Section 26 - Laying Sewer and Drain Pipe;
23. Section 27 - Water Distribution Systems;
24. Section 28 - Laying Culvert and Drain Tile;
25. Section 29 - Moving and Changing Utilities and Water Services;
26. Section 30 - Cast-In-Place Concrete Pipe;
27. Section 32 - Miscellaneous Facilities;
28. Section 33 - Pneumatically Applied Mortar (Gunite);

- 29. Section 34 - Electrical;
- 30. Section 37 - Boring and Jacking;
- 31. Section 38 - Standard Details (including elimination of out dated drawings and replacement with latest drawings available).

**GUARANTEED MAXIMUM PRICE AND FEE**

1. **Guaranteed Maximum Price.** The **Guaranteed Maximum Price** as of the date of execution of the Contract is \_\_\_\_\_  
 \$\_\_\_\_\_. The GMP is comprised of the following:

**Work Not Subject to Retention**

<b>Design Support Services &amp; Expenses:</b>	<b>\$100,000.00</b>
<b>Foundation Investigation Services</b>	<b>\$81,914.00</b>

**Work Subject to Retention**

**Estimated Cost of the WORK** \$ \_\_\_\_\_

**Cumulative Total Mark-Up ( \_\_\_\_%)** \$ \_\_\_\_\_

<b>General Conditions</b>	( ____%)	\$ _____
<b>General Requirements</b>	( ____%)	\$ _____
<b>Contractor Fee (Lump Sum)</b>	( ____%)	\$ _____
<b>General Liability Insurance</b>	( ____%)	\$ _____
<b>Payment and Performance Bonds</b>	( ____%)	\$ _____

**Sub-Total** \$ \_\_\_\_\_

**Contingency (Subject to Savings)** \$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_

**DAVIS-BACON REQUIREMENTS**

For determining the latest Davis-Bacon Wages, please reference the website listed below.

<http://www.wdol.gov/dba.aspx>

**Davis-Bacon Requirements**

**(CFR Title 29 (Labor) § 5.5(a) (Contract provisions and related matters))**

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing

wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

( 1 ) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working

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

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

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

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of

the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

**EXHIBIT L**

**DISADVANTAGED BUSINESS ENTERPRISE GUIDELINES**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

This project is subject to Title 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the Agency specifies a goal of      %.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown in the Notice to Contractors or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer or regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55 (d)(1) through (4) and (6).

**DBE Commitment Submittal**

Submit DBE information on the "Local Agency Bidder-DBE Commitment (Construction Contracts)," Exhibit 15-G(1), form included in the Bid Proposal Forms section of these Special Provisions. If the form is not submitted with the bid, remove it before submitting your bid.

If the DBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the Agency. DBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the DBE Commitment form unless the Agency requests it. If the Agency requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency finds your bid nonresponsive.

#### **Good Faith Efforts Submittal**

If you have not met the DBE goal, complete and submit the "DBE Information - Good Faith Efforts," Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit

certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.

3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

The agency may consider DBE commitments of the 2<sup>nd</sup> and 3<sup>rd</sup> bidders when determining whether the low bidder made good faith efforts to meet the DBE goal.

### **SUBCONTRACTOR AND DBE RECORDS**

Use each DBE subcontractor as listed on the List of Subcontractors form and the Local Agency Bidder DBE Commitment (Construction Contracts), Exhibit 15-G, forms unless you receive authorization for a substitution.

The Agency requests the Contractor to:

1. Notify the Engineer of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work

Maintain records including:

1. Name and business address of each 1st-tier subcontractor
2. Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
3. Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a Monthly DBE Trucking Verification form.

If a DBE is decertified before completing its work, the DBE must notify you in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form. Submit the form within 30 days of contract acceptance.

Upon work completion, complete a Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors, Exhibit 17-F, form. Submit it within 90 days of contract acceptance. The Agency withholds \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

### **5.7 PERFORMANCE OF DISADVANTAGED BUSINESS ENTERPRISES**

DBEs must perform work or supply materials as listed in the "Local Agency Bidder - DBE Commitment" form specified under Section 2, "Proposal Requirements and Conditions," of these special provisions. Do not terminate a DBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the Agency.

The Agency grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. Agency determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Agency of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. ~~1 or more of the reasons listed in the preceding paragraph~~
2. Notices from you to the DBE regarding the request
3. Notices from the DBEs to you regarding the request

If a listed DBE subcontractor is terminated, you must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The substitute DBE must perform at least

the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

Unless the Agency authorizes (1) a request to use other forces or sources of materials or (2) a good faith effort for a substitution of a terminated DBE, the Agency does not pay for work listed on the Local Agency Bidder DBE Commitment (Construction Contracts), Exhibit 15-G, form unless it is performed or supplied by the listed DBE or an authorized substitute.

### **5.8 SUBCONTRACTING**

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City of Sacramento may exercise the remedies provided under Pub Cont Code § 4110. The City of Sacramento may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

**The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.**

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

### **CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

- Federal Requirements for Federal – Aid Construction Projects (FR-1 through FR-16)
- Final Report of Utilization of Disadvantaged Businesses (Exhibit 17-F)
- Disadvantaged Business Enterprises (DBE) Certification Status (Exhibit 17-O)
- Required Contract Provisions Federal Aid Construction Contracts

**SECTION 12. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

**GENERAL.**—The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section 14. Whenever in said required contract provisions references are made to "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean "Engineer" as defined in Section 1-1.18 of the Standard Specifications.

**PERFORMANCE OF PREVIOUS CONTRACT.**—In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

**NON-COLLUSION PROVISION.**—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

**PARTICIPATION BY MINORITY BUSINESS ENTERPRISES IN SUBCONTRACTING.**—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated in part or in its entirety within other sections of these special provisions.

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are minority owned.)

1. Name of joint venture \_\_\_\_\_

2. Address of joint venture \_\_\_\_\_

3. Phone number of joint venture \_\_\_\_\_

4. Identify the firms, which comprise the joint venture. (The MBE partner must complete Schedule A.) \_\_\_\_\_

a. Describe the role of the MBE firm in the joint venture.

b. Describe very briefly the experience and business qualifications of each non-MBE joint venturer: \_\_\_\_\_

5. Nature of the joint venture's business \_\_\_\_\_

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of MBE ownership? \_\_\_\_\_

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question

6).

- a. Profit and loss sharing.
- b. Capital contributions, including equipment.
- c. Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision-making, including, but not limited to, those with prime responsibility for:

a. Financial decisions \_\_\_\_\_

b. Management decisions, such as:

1. Estimating \_\_\_\_\_

2. Marketing and sales \_\_\_\_\_

3. Hiring and firing of management personnel \_\_\_\_\_

4. Purchasing of major items or supplies \_\_\_\_\_

c. Supervision of field operations \_\_\_\_\_

Note.--If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

**Affidavit**

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

.....	.....
Name of Firm	Name of Firm
.....	.....
Signature	Signature
.....	.....
Name	Name
.....	.....
Title	Title
.....	.....
Date	Date

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared (Name) \_\_\_\_\_ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

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

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

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

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

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

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

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

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

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

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 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 paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. 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.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency 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, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) 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:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

(iii) 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.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) 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.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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

##### a. Apprentices (programs of the USDOL).

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.

##### b. Trainees (programs of the USDOL).

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 classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

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

**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 Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

**10. Certification of eligibility.**

a. 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).

b. 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).

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

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. 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 he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, 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 hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency 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 contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



**Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors**

FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS  
CEM 2402(F) (Rev. 02/2008)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal-aid Project No., the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to describe who did what by contract item number and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their certification number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership, and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights web site at: <http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (888) 810-6346.

Based on this DBE Program status, the following table depicts which column to be used:

DBE Program Status	Column to be used
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, Black American	BA UDBE
If program status shows DBE, Asian-Pacific Islander	APA UDBE
If program status shows DBE, Native American	NA UDBE
If program status shows DBE, Woman	W UDBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total dollar value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Enter the total of each of the six columns in Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form-CEM 2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the "final payment" to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.



**Disadvantaged Business Enterprises (DBE) Certification Status Change**

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Form CP-CEM 2403(F) (New 10/99)

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) CHANGE IN CERTIFICATION STATUS REPORT**

The top of the form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, the Administering Agency, the Contract Completion Date, and the Estimated Contract Amount. It requires the Prime Contractor's name and Business Address. The focus of the form is to substantiate and verify the actual DBE dollar amount paid to contractors on federally funded projects that had a changed in Certification status during the course of the completion of the contract. The two situations that are being addressed by CP-CEM 2403(F) are, if a firm certified as a DBE and doing work on the contract during the course of the project becomes Decertified, and if a non-DBE firm doing work on the contract during the course of the project becomes Certified as a DBE.

The form has a column to enter the Contract Item No (or Item Nos.) as well as a column for the Subcontractor's Name, Business Address, Business Phone, and contractor's Certification Number.

The column entitled Amount Paid While Certified will be used to enter the actual dollar value of the work performed by those contractors who meet the conditions as outlined above during the time period they are Certified as a DBE. This column on the CP-CEM-2403(F) should only reflect the dollar value of work performed while the firm was Certified as a DBE.

The column called Certification/Decertification Date (Letter attached) will reflect either the date of the Decertification Letter sent out by the Civil Rights Program or the date of the Certification Certificate mailed out by the Civil Rights Program. There is a box to check that support documentation is attached to the CP-CEM-2403 (F) form.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

**BUY AMERICAN GUIDELINES**

agement, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter shall provide the Secretary and a contractor the Secretary chooses under subsection (b) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(Added Pub. L. 110-432, div. B, title III, §301(a), Oct. 16, 2008, 122 Stat. 4941.)

**§ 24404. Use of capital grants to finance first-dollar liability of grant project**

Notwithstanding the requirements of section 24402 of this chapter, the Secretary of Transportation may approve the use of a capital assistance grant under this chapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the grant, but the coverage may not exceed \$20,000,000 per occurrence or \$20,000,000 in aggregate per year.

(Added Pub. L. 110-432, div. B, title III, §301(a), Oct. 16, 2008, 122 Stat. 4942.)

**§ 24405. Grant conditions**

(a) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) applying paragraph (1) would be inconsistent with the public interest;

(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or

(D) including domestic material will increase the cost of the overall project by more than 25 percent.

(3) For purposes of this subsection, in calculating the components' costs, labor costs involved in final assembly shall not be included in the calculation.

(4) If the Secretary determines that it is necessary to waive the application of paragraph (1) based on a finding under paragraph (2), the Secretary shall, before the date on which such finding takes effect—

(A) publish in the Federal Register a detailed written justification as to why the waiver is needed; and

(B) provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.

(5) Not later than December 31, 2012, the Secretary shall submit to the Committee on Trans-

portation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on any waivers granted under paragraph (2).

(6) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

(7) A person is ineligible to receive a contract or subcontract made with amounts authorized under this chapter if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) affixed a "Made in America" label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

(B) represented that goods described in subparagraph (A) of this paragraph were produced in the United States.

(8) The Secretary may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

(9) The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

(10) A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

(11) The requirements of this subsection shall only apply to projects for which the costs exceed \$100,000.

(b) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this chapter shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts that definition or in which that definition applies, including—

- (1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.);
- (2) the Railway Labor Act (43<sup>1</sup> U.S.C. 151 et seq.); and
- (3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this chapter for a project that uses rights-of-way owned by a railroad that—

(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

- (A) any compensation for such use;
- (B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;
- (C) an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and
- (D) an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and

(2) the applicant agrees to comply with—

- (A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of this title; and
- (B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this chapter.

(d) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act<sup>2</sup> on a project funded in whole or in part by grants made under this chapter and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee's seniority on the predecessor provider for each position with the replacing entity that is in the employee's craft or class and is available within 3 years after the termination of the service being replaced;

(B) establishes a procedure for notifying such an employee of such positions;

(C) establishes a procedure for such an employee to apply for such positions; and

(D) establishes rates of pay, rules, and working conditions.

(2) IMMEDIATE REPLACEMENT SERVICE.—

(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the replacing entity's rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). The arbitrator shall be guided by prevailing national standard rates of pay, benefits, and working conditions for comparable work. This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

<sup>1</sup> So in original. Probably should be "(45)".

<sup>2</sup> See References in Text note below.

# Rules and Regulations

Federal Register

Vol. 74, No. 77

Thursday, April 23, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Part 176

#### Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards

**AGENCY:** Office of Federal Financial Management, Office of Management and Budget (OMB).

**ACTION:** Interim final guidance.

**SUMMARY:** The Office of Federal Financial Management (OFFM) is establishing Governmentwide guidance and standard award terms for agencies to include in financial assistance awards (namely, grants, cooperative agreements, and loans) as part of their implementation of sections 1512, and 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). This guidance does not cover all award terms that may be needed on financial assistance awards funded directly or assisted by the Federal Government under the Recovery Act. The focus of this guidance is on implementing Recovery Act provisions that may require greater clarification in order to foster consistent application across the Federal Government. Under the interim final guidance, agencies would use the standard award terms in their financial assistance awards to require recipients and subrecipients (first-tier that are not individuals) to maintain current registrations in the Central Contractor Registration (CCR) database; to require recipients to report quarterly on project or activity status, subgrant and subcontract information; to notify recipients of the domestic sourcing ("Buy American") requirements that apply to certain iron, steel and manufactured goods; to notify recipients of the wage rate requirements

that apply to certain projects; and to ensure proper accounting and reporting of Recovery Act expenditures in single audits.

**DATES:** This document is effective April 23, 2009. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by no later than June 22, 2009.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent to via <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "Recovery Act Guidance" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Electronic mail comments may also be submitted to: Marguerite Pridgen at [mpridgen@omb.eop.gov](mailto:mpridgen@omb.eop.gov). Please include "Recovery Act Guidance" in the subject line and the full body of your comments in the text of the electronic message and not as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-3952.

Comments may be mailed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

All responses will be summarized and included in the request for OMB approval.

**FOR FURTHER INFORMATION CONTACT:** Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395-7844 (direct) or (202) 395-3993 (main office) and e-mail: [Marguerite.E.Pridgen@omb.eop.gov](mailto:Marguerite.E.Pridgen@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

A. Section 1512(c) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, hereafter referred to as "the Recovery Act" or "the Act") requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The data elements proposed for reporting the information described in section 1512(c) were published in the **Federal Register** on April 1, 2009 [74 FR 14824]. An entity that receives assistance funding under the Recovery Act must report information including, but not limited to,

- i. The total amount of recovery funds received from that agency;
- ii. The amount of recovery funds received that were expended or obligated to projects or activities; and
- iii. A detailed list of all projects or activities for which recovery funds were expended or obligated, including—
  1. The name of the project or activity;
  2. A description of the project or activity;
  3. An evaluation of the completion status of the project or activity;
  4. An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
  5. For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- iv. Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, hereafter referred to as "the Transparency Act"), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget. The Transparency Act identifies specific data elements that the Web site ([USAspending.gov](http://USAspending.gov)) must include for each Federal award and authorizes OMB to specify additional elements for other relevant information. A 2008 amendment to the Transparency Act called the "Government Funding Transparency Act of 2008" (Pub. L. 110-252) added a requirement to collect

compensation information on certain chief executive officers (CEOs) of the recipient and subrecipient entity. An entity that receives assistance funding under the Recovery Act must report information required under the Transparency Act including, but not limited to,

1. The name of the entity receiving the award;
2. The amount of the award;
3. The transaction type;
4. The funding agency;
5. The Catalog of Federal Domestic Assistance number;
6. The program source;
7. The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;
8. The location of the primary place of performance under the award, including four data elements for the city, State, Congressional district, and country;
9. A unique identifier of the entity receiving the award;
10. A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity; and
11. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25M or more in annual gross revenue from Federal awards.

B. Section 1512(h) of the Recovery Act requires recipients of Recovery Act funds, including those receiving funds directly from the Federal Government, to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov>. Because recipients must report information on their first-tier contracts and awards, 2 CFR part 176 would establish a requirement for subrecipient registration in the CCR as a way to help ensure consistent reporting of data about each entity and thereby make the data more useful to the public. Without the requirement, multiple recipients doing business with the same entity may use different variations of the entity's name, address, or parent organization when they each report on their awards to the entity. It should be noted that in order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required.

C. Section 1605 of the Recovery Act requires that projects, funded by the Recovery Act, for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the

specified exemptions applies. The Act provides that this requirement be applied in a manner consistent with U.S. obligations under international agreements. Definitions of "manufactured good," "public building and public work," and other terms as they pertain to the Buy American guidance in 2 CFR part 176 are found in § 176.140 and § 176.160.

D. Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. 31) wage rates to "laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government" pursuant to the Recovery Act.

E. To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215.21, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. Guidance and an award term are provided in part 176 to help ensure that recipients understand their responsibilities with respect to tracking, accounting and reporting transactions during the award and in preparing audit documentation and reports in accordance with OMB Circular A-133, if applicable.

## II. Next Steps

We will consider all comments received on the interim final version of the OMB guidance as we develop the final guidance. Federal agencies that award grants, cooperative agreements, and other financial assistance awards will immediately implement this interim final guidance through the appropriate award terms. The award terms on awards made while this interim final version of this guidance is in effect do not need to be modified to reflect any modified award terms in the final guidance unless specifically required in the final guidance.

### List of Subjects in 2 CFR Part 176

Assistance awards, Authorized agency action official, Award officials, Buy American, Classified, Davis-Bacon Act,

Grants, Cooperative agreements, Loans, Recovery Act, Wage rate.

Danny Werfel,  
Deputy Controller.

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR chapter I by adding part 176 to read as follows:

### PART 176—AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5

Sec.

- 176.10 Purpose of this part.
- 176.20 Agency responsibilities (general).
- 176.30 Definitions.

#### Subpart A—Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009

- 176.40 Procedure.
- 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.

#### Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009

- 176.60 Statutory requirement.
- 176.70 Policy.
- 176.80 Exceptions.
- 176.90 Non-application to acquisitions covered under international agreements.
- 176.100 Timely determination concerning the inapplicability of section 1605 of the Recovery Act.
- 176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.
- 176.120 Determinations on late requests.
- 176.130 Noncompliance.
- 176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.
- 176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.
- 176.160 Award term—Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.
- 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

#### Appendix to Subpart B of Part 176—U.S. States, Other Sub-Federal Entities, and Other Entities Subject to U.S. Obligations Under International Agreements

#### Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009

- 176.180 Procedure.

176.190 Award term—Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009.

**Subpart D—Single Audit Information for Recipients of Recovery Act Funds**

176.200 Procedure.

176.210 Award term—Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

**Authority:** American Recovery and Reinvestment Act of 2009, Public Law 111-5; Federal Funding Accountability and Transparency Act of 2006, (Pub. L. 109-282), as amended.

**§ 176.10 Purpose of this part.**

This part establishes Federal Governmentwide award terms for financial assistance awards, namely, grants, cooperative agreements, and loans, to implement the cross-cutting requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Recovery Act). These requirements are cross-cutting in that they apply to more than one agency's awards.

**§ 176.20 Agency responsibilities (general).**

(a) In any assistance award funded in whole or in part by the Recovery Act, the award official shall indicate that the award is being made under the Recovery Act, and indicate what projects and/or activities are being funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the assistance type.

(b) To maximize transparency of Recovery Act funds required for reporting by the assistance recipient, the award official shall consider structuring assistance awards to allow for separately tracking Recovery Act funds.

(c) Award officials shall ensure that recipients comply with the Recovery Act requirements of Subpart A. If the recipient fails to comply with the reporting requirements or other award terms, the award official or other authorized agency action official shall take the appropriate enforcement or termination action in accordance with 2 CFR 215.62 or the agency's implementation of the OMB Circular A-102 grants management common rule. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(d) The award official shall make the recipient's failure to comply with the reporting requirements a part of the recipient's performance record.

**§ 176.30 Definitions.**

As used in this part—

*Award* means any grant, cooperative agreement or loan made with Recovery Act funds. Award official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

*Classified* or "*classified information*" means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

*Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government.

Recovery funds or Recovery Act funds are funds made available through the appropriations of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

*Subaward* means—

(1) A legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient;

(2) The term does not include the recipient's procurement of property and services needed to carry out the project or program (for further explanation, see § 176.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"). OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

(3) A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

*Subcontract* means a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program.

*Subrecipient* or *Subawardee* means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a

Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 176.210 of OMB Circular A-133.

**Subpart A—Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009**

**§ 176.40 Procedure.**

The award official shall insert the standard award term in this Subpart in all awards funded in whole or in part with Recovery Act funds, except for those that are classified, awarded to individuals, or awarded under mandatory and entitlement programs, except as specifically required by OMB, or expressly exempted from the reporting requirement in the Recovery Act.

**§ 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.**

Agencies are responsible for ensuring that their recipients report information required under the Recovery Act in a timely manner. The following award term shall be used by agencies to implement the recipient reporting and registration requirements in section 1512:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

**Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009**

**§ 176.60 Statutory requirement.**

Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:

- (a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (c) Applying the domestic preference would be inconsistent with the public interest.

**§ 176.70 Policy.**

Except as provided in § 176.80 or § 176.90—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (see definitions at §§ 176.140 and 176.160) unless—

- (1) The public building or public work is located in the United States; and
- (2) All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

(ii) There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

(b) Paragraph (a) of this section shall not apply where the Recovery Act requires the application of alternative

Buy American requirements for iron, steel, and manufactured goods.

**§ 176.80 Exceptions.**

(a) When one of the following exceptions applies in a case or category of cases, the award official may allow the recipient to use foreign iron, steel and/or manufactured goods in the project without regard to the restrictions of section 1605 of the Recovery Act:

(1) *Nonavailability.* The head of the Federal department or agency may determine that the iron, steel or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project.

(2) *Unreasonable cost.* The head of the Federal department or agency may determine that the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent in accordance with § 176.110.

(3) *Inconsistent with public interest.* The head of the Federal department or agency may determine that application of the restrictions of section 1605 of the Recovery Act would be inconsistent with the public interest.

(b) When a determination is made for any of the reasons stated in this section that certain foreign iron, steel, and/or manufactured goods may be used—

- (1) The award official shall list the excepted materials in the award; and
- (2) The head of the Federal department or agency shall publish a notice in the **Federal Register** within two weeks after the determination is made, unless the item has already been determined to be domestically nonavailable. A list of items that are not domestically available is at 48 CFR 25.104(a). The **Federal Register** notice or information from the notice may be posted by OMB to Recovery.gov. The notice shall include—

- (i) The title “Buy American Exception under the American Recovery and Reinvestment Act of 2009”;
- (ii) The dollar value and brief description of the project; and
- (iii) A detailed written justification as to why the restriction is being waived.

**§ 176.90 Non-application to acquisitions covered under international agreements.**

*Acquisitions covered by international agreements.* Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605

shall be applied in a manner consistent with U.S. obligations under international agreements.

(a) The Buy American requirement set out in § 176.70 shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in paragraph (b)(2) of this section, and the recipient is required under an international agreement, described in the appendix to this subpart, to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more and projects that are not specifically excluded from the application of those agreements.

(b) The international agreements that obligate recipients that are covered under an international agreement to treat the goods and services of a Party the same as domestic goods and services and the respective Parties to the agreements are:

- (1) The World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) The following Free Trade Agreements:

- (i) Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua);
- (ii) North American Free Trade Agreement (NAFTA) (Canada and Mexico);
- (iii) United States-Australia Free Trade Agreement;
- (iv) United States-Bahrain Free Trade Agreement;
- (v) United States-Chile Free Trade Agreement;
- (vi) United States-Israel Free Trade Agreement;
- (vii) United States-Morocco Free Trade Agreement;
- (viii) United States-Oman Free Trade Agreement;
- (ix) United States-Peru Trade Promotion Agreement; and
- (x) United States-Singapore Free Trade Agreement.

(3) United States-European Communities Exchange of Letters (May 15, 1995); Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark,

Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

**§ 176.100 Timely determination concerning the inapplicability of section 1605 of the Recovery Act.**

(a) The head of the Federal department or agency involved may make a determination regarding inapplicability of section 1605 to a particular case or to a category of cases.

(b) Before Recovery Act funds are awarded by the Federal agency or obligated by the recipient for a project for the construction, alteration, maintenance, or repair of a public building or public work, an applicant or recipient may request from the award official a determination concerning the inapplicability of section 1605 of the Recovery Act for specifically identified items.

(c) The time for submitting the request and the information and supporting data that must be included in the request are to be specified in the agency's and recipient's request for applications and/or proposals, and as appropriate, in other written communications. The content of those communications should be consistent with the notice in § 176.150 or § 176.170, whichever applies.

(d) The award official must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(e) In making a determination based on the increased cost to the project of using domestic iron, steel, and/or manufactured goods, the award official must compare the total estimated cost of the project using foreign iron, steel and/or relevant manufactured goods to the estimated cost if all domestic iron, steel, and/or relevant manufactured goods were used. If use of domestic iron, steel, and/or relevant manufactured goods would increase the cost of the overall project by more than 25 percent, then the award official shall determine that the cost of the domestic iron, steel, and/or relevant manufactured goods is unreasonable.

**§ 176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.**

(a) If the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal

to use such foreign iron, steel, and/or manufactured goods as follows:

(1) Use an evaluation factor of 25 percent, applied to the total estimated cost of the project, if the foreign iron, steel, and/or manufactured goods are to be used in the project based on an exception for unreasonable cost requested by the applicant.

(2) Total evaluated cost = project cost estimate + (.25 × project cost estimate, if paragraph (a)(1) of this section applies).

(b) Applicants or recipients also may submit alternate proposals based on use of equivalent domestic iron, steel, and/or manufactured goods to avoid possible denial of Recovery Act funding for the proposal if the Federal Government determines that an exception permitting use of the foreign item(s) does not apply.

(c) If the award official makes an award to an applicant that proposed foreign iron, steel, and/or manufactured goods not listed in the applicable notice in the request for applications or proposals, then the award official must add the excepted materials to the list in the award term.

**§ 176.120 Determinations on late requests.**

(a) If a recipient requests a determination regarding the inapplicability of section 1605 of the Recovery Act after obligating Recovery Act funds for a project for construction, alteration, maintenance, or repair (late request), the recipient must explain why it could not request the determination before making the obligation or why the need for such determination otherwise was not reasonably foreseeable. If the award official concludes that the recipient should have made the request before making the obligation, the award official may deny the request.

(b) The award official must base evaluation of any late request for a determination regarding the inapplicability of section 1605 of the Recovery Act on information required by § 176.150(c) and (d) or § 176.170(c) and (d) and/or other readily available information.

(c) If a determination, under § 176.80 is made after Recovery Act funds were obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official must amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis of the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions

taken to cover costs associated with acquiring or using the foreign iron, steel, and/or manufactured goods. When the basis for the exception is the unreasonable cost of domestic iron, steel, and/or manufactured goods the award official shall adjust the award amount or the budget, as appropriate, by at least the differential established in § 176.110(a).

**§ 176.130 Noncompliance.**

The award official must—

(a) Review allegations of violations of section 1605 of the Recovery Act;

(b) Unless fraud is suspected, notify the recipient of the apparent unauthorized use of foreign iron, steel, and/or manufactured goods and request a reply, to include proposed corrective action; and

(c) If the review reveals that a recipient or subrecipient has used foreign iron, steel, and/or manufactured goods without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act in accordance with § 176.120.

(2) Consider requiring the removal and replacement of the unauthorized foreign iron, steel, and/or manufactured goods.

(3) If removal and replacement of foreign iron, steel, and/or manufactured goods used in a public building or a public work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Federal Government, the award official may determine in writing that the foreign iron, steel, and/or manufactured goods need not be removed and replaced. A determination to retain foreign iron, steel, and/or manufactured goods does not constitute a determination that an exception to section 1605 of the Recovery Act applies, and this should be stated in the determination. Further, a determination to retain foreign iron, steel, and/or manufactured goods does not affect the Federal Government's right to reduce the amount of the award by the cost of the steel, iron, or manufactured goods that are used in the project or to take enforcement or termination action in accordance with the agency's grants management regulations.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate remedies, such as withholding cash payments pending correction of the deficiency, suspending or terminating the award, and withholding further awards for the project. Also consider preparing and

forwarding a report to the agency suspending or debarring official in accordance with the agency's debarment rule implementing 2 CFR part 180. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

**§ 176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.**

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or  
(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery

and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

*[Award official to list applicable excepted materials or indicate "none"]*

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]  
 [Include other applicable supporting information.]  
 [\*Include all delivery costs to the construction site.]

**§ 176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.**

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and do not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in their solicitations:

(a) *Definitions.* Manufactured good, public building and public work, and steel, as used in this notice, are defined in the 2 CFR 176.140.

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs at 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of

comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes foreign iron, steel, and/or manufactured goods not listed by the Federal Government at 2 CFR 176.140(b)(2), the applicant also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with 2 CFR 176.140(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.140(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic items.

**§ 176.160 Award term—Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.**

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

*Designated country*—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary,

Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Designated country iron, steel, and/or manufactured goods*—(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good*—(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel

and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects

with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in

accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]  
 [Include other applicable supporting information.]  
 [\*Include all delivery costs to the construction site.]

**§ 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.**

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions.* Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building and public work, and steel, as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The

prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal

Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

**Appendix to Subpart B of Part 176—U.S. States, Other Sub-Federal Entities, and Other Entities Subject to U.S. Obligations Under International Agreements**

States	Entities covered	Exclusions	Relevant international agreements
Arizona .....	Executive branch agencies .....	.....	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Arkansas .....	Executive branch agencies, including universities but excluding the Office of Fish and Game.	construction services .....	—WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —US.-Peru TPA. —U.S.-Singapore FTA.
California .....	Executive branch agencies .....	.....	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Colorado .....	Executive branch agencies .....	.....	—WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA.

States	Entities covered	Exclusions	Relevant international agreements
Connecticut .....	—Department of Administrative Services.	.....	—U.S.-Singapore FTA. —WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Delaware .....	—Department of Transportation. —Department of Public Works. —Constituent Units of Higher Education. —Administrative Services (Central Procurement Agency).	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Florida .....	—State Universities. —State Colleges. Executive branch agencies .....	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA. —U.S.-Australia FTA.
Georgia .....	—Department of Administrative Services —Georgia Technology Authority.	beef; compost; mulch .....	—WTO GPA (except Canada). —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA. —U.S.-Australia FTA.
Hawaii .....	Department of Accounting and General Services.	software developed in the state; construction.	—WTO GPA (except Canada). —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Idaho .....	Central Procurement Agency (including all colleges and universities subject to central purchasing oversight).	.....	—WTO GPA (except Canada). —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Illinois .....	—Department of Central Management Services.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA. —U.S.-EC Exchange of Letters (applies to EC Member States for procurement not covered by WTO GPA and only where the state considers out-of-state suppliers).
Iowa .....	—Department of General Services —Department of Transportation. —Board of Regents' Institutions (universities).	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Kansas .....	Executive branch agencies .....	construction services; automobiles; aircraft.	—WTO GPA (except Canada). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Kentucky .....	Division of Purchases, Finance and Administration Cabinet	construction projects .....	—WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Louisiana .....	Executive branch agencies .....	.....	—WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
Maine	<ul style="list-style-type: none"> <li>—Department of Administrative and Financial Services.</li> <li>—Bureau of General Services (covering state government agencies and school construction).</li> </ul>	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Maryland	<ul style="list-style-type: none"> <li>—Department of Transportation.</li> <li>—Office of the Treasury.</li> <li>—Department of the Environment.</li> <li>—Department of General Services.</li> <li>—Department of Housing and Community Development.</li> <li>—Department of Human Resources.</li> <li>—Department of Licensing and Regulation.</li> <li>—Department of Natural Resources.</li> <li>—Department of Public Safety and Correctional Services.</li> <li>—Department of Personnel.</li> <li>—Department of Transportation.</li> </ul>	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Massachusetts	<ul style="list-style-type: none"> <li>—Executive Office for Administration and Finance.</li> <li>—Executive Office of Communities and Development.</li> <li>—Executive Office of Consumer Affairs.</li> <li>—Executive Office of Economic Affairs.</li> <li>—Executive Office of Education.</li> <li>—Executive Office of Elder Affairs.</li> <li>—Executive Office of Environmental Affairs.</li> <li>—Executive Office of Health and Human Service.</li> <li>—Executive Office of Labor.</li> <li>—Executive Office of Public Safety.</li> <li>—Executive Office of Transportation and Construction.</li> </ul>		<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Michigan	Department of Management and Budget.	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Minnesota	Executive branch agencies		<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Mississippi	Department of Finance and Administration.	services	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Missouri	<ul style="list-style-type: none"> <li>—Office of Administration</li> <li>—Division of Purchasing and Materials Management.</li> </ul>		<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Montana	Executive branch agencies	goods	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Nebraska	Central Procurement Agency		<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
New Hampshire	Central Procurement Agency	construction-grade steel (including requirements on subcontracts), motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>

States	Entities covered	Exclusions	Relevant international agreements
New York	<ul style="list-style-type: none"> <li>—State agencies.</li> <li>—State university system.</li> <li>—Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates.</li> </ul>	<p>construction-grade steel (including requirements on subcontracts); motor vehicles; coal; transit cars, buses and related equipment.</p>	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
North Dakota			<ul style="list-style-type: none"> <li>—U.S.-EC Exchange of Letters (applies to EC Member States and only where the state considers out-of-state suppliers).</li> </ul>
Oklahoma	<p>Department of Central Services and all state agencies and departments subject to the Oklahoma Central Purchasing Act.</p>	<p>construction services; construction-grade steel (including requirements on subcontracts); motor vehicles; coal.</p>	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Oregon	<p>Department of Administrative Services.</p>		<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR-CAFTA (except Honduras).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Pennsylvania	<p>Executive branch agencies, including:</p> <ul style="list-style-type: none"> <li>—Governor's Office.</li> <li>—Department of the Auditor General.</li> <li>—Treasury Department.</li> <li>—Department of Agriculture.</li> <li>—Department of Banking.</li> <li>—Pennsylvania Securities Commission.</li> <li>—Department of Health.</li> <li>—Department of Transportation.</li> <li>—Insurance Department.</li> <li>—Department of Aging.</li> <li>—Department of Correction.</li> <li>—Department of Labor and Industry.</li> <li>—Department of Military Affairs.</li> <li>—Office of Attorney General.</li> <li>—Department of General Services.</li> <li>—Department of Education.</li> <li>—Public Utility Commission.</li> <li>—Department of Revenue.</li> <li>—Department of State.</li> <li>—Pennsylvania State Police.</li> <li>—Department of Public Welfare.</li> <li>—Fish Commission.</li> <li>—Game Commission.</li> <li>—Department of Commerce.</li> <li>—Board of Probation and Parole.</li> <li>—Liquor Control Board.</li> <li>—Milk Marketing Board.</li> <li>—Lieutenant Governor's Office.</li> <li>—Department of Community Affairs.</li> <li>—Pennsylvania Historical and Museum Commission.</li> <li>—Pennsylvania Emergency Management Agency.</li> <li>—State Civil Service Commission.</li> <li>—Pennsylvania Public Television Network.</li> <li>—Department of Environmental Resources.</li> <li>—State Tax Equalization Board.</li> <li>—Department of Public Welfare.</li> <li>—State Employees' Retirement System.</li> <li>—Pennsylvania Municipal Retirement Board.</li> </ul>	<p>construction-grade steel (including requirements on subcontracts); motor vehicles; coal.</p>	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>

States	Entities covered	Exclusions	Relevant international agreements
Rhode Island .....	<ul style="list-style-type: none"> <li>—Public School Employees' Retirement System.</li> <li>—Pennsylvania Crime Commission.</li> <li>—Executive Offices.</li> </ul> Executive branch agencies .....	boats, automobiles, buses and related equipment.	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR—CAFTA (except Honduras).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
South Dakota .....	Central Procuring Agency (including universities and penal institutions).	beef .....	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR—CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Tennessee .....	Executive branch agencies .....	Services; construction .....	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Texas .....	Texas Building and Procurement Commission.	.....	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR—CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Utah .....	Executive branch agencies .....	.....	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR—CAFTA (except Honduras).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Vermont .....	Executive branch agencies .....	.....	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR—CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Washington .....	Executive branch agencies, including: <ul style="list-style-type: none"> <li>—General Administration.</li> <li>—Department of Transportation.</li> <li>—State Universities.</li> </ul>	fuel; paper products; boats; ships; and vessels.	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—DR—CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
West Virginia .....	.....	.....	<ul style="list-style-type: none"> <li>—U.S.-EC Exchange of Letters (applies to EC Member States and only where the state considers out-of-state suppliers).</li> </ul>
Wisconsin .....	Executive branch agencies, including: <ul style="list-style-type: none"> <li>—Department of Administration.</li> <li>—State Correctional Institutions.</li> <li>—Department of Development.</li> <li>—Educational Communications Board.</li> <li>—Department of Employment Relations.</li> <li>—State Historical Society.</li> <li>—Department of Health and Social Services.</li> <li>—Insurance Commissioner.</li> <li>—Department of Justice.</li> <li>—Lottery Board.</li> <li>—Department of Natural Resources.</li> <li>—Administration for Public Instruction.</li> </ul>	.....	<ul style="list-style-type: none"> <li>—WTO GPA (except Canada).</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>

States	Entities covered	Exclusions	Relevant international agreements
Wyoming .....	—Racing Board. —Department of Revenue. —State Fair Park Board. —Department of Transportation. —State University System. —Procurement Services Division —Wyoming Department of Transportation. —University of Wyoming .....	construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA (except Canada). —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Other sub-federal entities	Entities covered	Exclusions	Relevant international agreements
Puerto Rico .....	—Department of State .....  —Department of Justice. —Department of the Treasury. —Department of Economic Development and Commerce. —Department of Labor and Human Resources. —Department of Natural and Environmental Resources. —Department of Consumer Affairs. —Department of Sports and Recreation.	construction services .....	—DR-CAFTA. —U.S.-Peru TPA.
Port Authority of New York and New Jersey .....	.....	restrictions attached to Federal funds for airport projects; maintenance, repair and operating materials and supplies.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Port of Baltimore .....	.....	restrictions attached to Federal funds for airport projects.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
New York Power Authority .....	.....	restrictions attached to Federal funds for airport projects; conditions specified for the State of New York.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Massachusetts Port Authority .....	.....	.....	U.S.-EC Exchange of Letters (applies to EC Member States and only where the Port Authority considers out-of-state suppliers).
Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio .....	.....	.....	U.S.-EC Exchange of Letters (only applies to EC Member States and where the city considers out-of-city suppliers).
Other entities	Entities covered	Exclusions	Relevant international agreements
Rural Utilities Service (waiver of Buy American restriction on financing for all power generation projects) .....	.....	.....	—WTO GPA. —DR-CAFTA. —NAFTA. —U.S.-Australia FTA. —U.S.-Bahrain FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Oman FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Rural Utilities Service (waiver of Buy American restriction on financing for telecommunications projects) .....	.....	.....	—NAFTA. —U.S.-Israel FTA.

General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:

1. The restrictions attached to Federal funds to states for mass transit and highway projects.
2. Dredging.  
The World Trade Organization Government Procurement Agreement (WTO

GPA) Parties: Aruba, Austria, Canada, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania,

Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

The Free Trade Agreements and the respective Parties to the agreements are:

(1) Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA): Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua;

(2) North American Free Trade Agreement (NAFTA): Canada and Mexico;

(3) United States-Australia Free Trade Agreement (U.S.-Australia FTA);

(4) United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA);

(5) United States-Chile Free Trade Agreement (U.S.-Chile FTA);

(6) United States-Israel Free Trade Agreement (U.S.-Israel FTA);

(7) United States-Morocco Free Trade Agreement (U.S.-Morocco FTA);

(8) United States-Oman Free Trade Agreement (U.S.-Oman FTA);

(9) United States-Peru Trade Promotion Agreement (U.S.-Peru TPA); and

(10) United States-Singapore Free Trade Agreement (U.S.-Singapore FTA).

United States-European Communities Exchange of Letters (May 30, 1995) (U.S.-EC Exchange of Letters) applies to EC Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

### Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009

#### § 176.180 Procedure.

The award official shall insert the standard award term in this Subpart in all awards funded in whole or in part with Recovery Act funds.

#### § 176.190 Award term—Wage Rate Requirements under Section 1606 of the Recovery Act.

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of

chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

### Subpart D—Single Audit Information for Recipients of Recovery Act Funds

#### § 176.200 Procedure.

The award official shall insert the standard award term in this Subpart in all awards funded in whole or in part with Recovery Act funds.

#### § 176.210 Award term—Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996

and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

[FR Doc. E9-9073 Filed 4-22-09; 8:45 am]  
BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Doc. No. AO-192-A7; AMS-FV-07-0004; FV06-984-1 C]

### Walnuts Grown in California; Order Amending Marketing Order No. 984; Correcting Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correcting amendment.

(4) **SUBSEQUENT REPLACEMENT OF SERVICE.**—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

(e) **INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.**—Nothing in this section applies to—

(1) commuter rail passenger transportation (as defined in section 24102(4)<sup>2</sup> of this title) operations of a State or local government<sup>3</sup> authority (as those terms are defined in section 5302(11)<sup>2</sup> and (6),<sup>2</sup> respectively, of this title) eligible to receive financial assistance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

(2) the Alaska Railroad or its contractors; or

(3) Amtrak's access rights to railroad rights of way and facilities under current law.

(f) **LIMITATION.**—No grants shall be provided under this chapter for commuter rail passenger transportation, as defined in section 24102(4)<sup>2</sup> of this title.

(Added Pub. L. 110-432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4942.)

#### REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railway Labor Act, referred to in subsec. (b)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(3), is act June 25, 1938, ch. 680, 52 Stat. 1094, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

The date of enactment of this Act, referred to in subsec. (d)(1), probably means the date of enactment of Pub. L. 110-432, which enacted this section and was approved Oct. 16, 2008.

Section 24102(4) of this title, referred to in subsecs. (e)(1) and (f), was redesignated section 24102(3) of this title by Pub. L. 110-432, div. B, title II, § 201(a)(2), Oct. 16, 2008, 122 Stat. 4909.

<sup>2</sup> So in original. Probably should be "governmental".

Section 5302(11) of this title, referred to in subsec. (e)(1), probably means section 5302(a)(13) of this title, which defines "State".

Section 5302(6) of this title, referred to in subsec. (e)(1), probably means section 5302(a)(6), which defines "local governmental authority".

#### ASSISTANCE WITH BUY AMERICA WAIVER REQUESTS

Pub. L. 110-432, div. B, title III, § 301(c), Oct. 16, 2008, 122 Stat. 4946, provided that: "In implementing section 24405(a) of title 49, United States Code, the Federal Highway Administration shall, upon request by the Federal Railroad Administration, assist the Federal Railroad Administration in developing a process for posting on its website or distributing via email notices of waiver requests received pursuant to such subsection and soliciting public comments on the intent to issue a waiver. The Federal Railroad Administration's development of such a process does not relieve the Federal Railroad Administration of the requirements under paragraph (4) of such subsection."

#### § 24406. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Transportation for capital grants under this chapter the following amounts:

- (1) For fiscal year 2009, \$100,000,000.
- (2) For fiscal year 2010, \$300,000,000.
- (3) For fiscal year 2011, \$400,000,000.
- (4) For fiscal year 2012, \$500,000,000.
- (5) For fiscal year 2013, \$600,000,000.

(Added Pub. L. 110-432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4946.)

#### [CHAPTER 245—REPEALED]

[[§ 24501 to 24506. Repealed. Pub. L. 105-134, title I, § 106(a), Dec. 2, 1997, 111 Stat. 2573]]

Section 24501, Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 919; Pub. L. 103-429, § 6(21), Oct. 31, 1994, 108 Stat. 4379; Pub. L. 104-88, title III, § 308(h), Dec. 29, 1995, 109 Stat. 947, related to status of Amtrak Commuter and applicable laws.

Section 24502, Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 920, related to board of directors of Amtrak Commuter.

Section 24503, Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 921, related to appointment and service of officers of Amtrak Commuter.

Section 24504, Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 921, related to general authority of Amtrak Commuter.

Section 24505, Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 921, related to Amtrak's rights and responsibilities as relating to commuter rail passenger transportation.

Section 24506, Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 922, provided that certain powers and duties of Consolidated Rail Corporation were not affected by this chapter.

#### TRACKAGE RIGHTS NOT AFFECTED

Pub. L. 105-134, title I, § 106(c), Dec. 2, 1997, 111 Stat. 2573, provided that: "The repeal of chapter 245 of title 49, United States Code, by subsection (a) of this section is without prejudice to the retention of trackage rights over property owned or leased by commuter authorities."

#### CHAPTER 247—AMTRAK ROUTE SYSTEM

Sec.

24701. National rail passenger transportation system.

24702. Transportation requested by States, authorities, and other persons<sup>1</sup>

<sup>1</sup> So in original. Probably should be followed by a period.

**EXHIBIT N**

**LIQUIDATED DAMAGES ASSESSMENT**

**Liquidated Damages Assessment**

(Please fill in the following information, add additional information as necessary to determine LD amount)

**Sacramento Valley Station Phase 2**

**Project Name**

**Project Manager**

**Greg Taylor**

**Direct Costs**

Project Manager	\$ -	per hour	@	4 Planned Hours per Day
Inspector	\$ -	per hour	@	2 Planned Hours per Day
Additional Costs (CM Cost)	\$ -	per hour	@	8 Planned Hours per Day
Additional Bond Fund Support	\$ -	per hour	@	1 Daily Cost

**Indirect Costs (As Applicable)**

Rent (At alternate facility housing staff and programs)  
 Lost Rent (Missed Programming Opportunities)  
 Utilities  
 Additional Costs

**Client Impacted Costs**

Delayed Occupancy Costs  
 Storage  
 Furniture Removal & Reinstall  
 (includes extended storage of existing & storage of new items)

**Total Amount of Liquidated Damages**

Work Funded Under Initial GMP		Extended Cost	Extended Cost
		Before June 15, 2009	After June 15, 2009
\$	-	per day	\$ - per day
\$	-	per day	\$ - per day
\$	-	per day	\$ - per day
\$	-	per day	\$ - per day
n/a		per day	n/a per day
\$	75.00	per day	\$ 75.00 per day
\$	50.00	per day	\$ 50.00 per day
n/a		per day	n/a per day
n/a		per day	n/a per day
\$	120.00	per day	\$ 120.00 per day
n/a		per day	n/a per day
\$	245.00	per day	\$ 245.00 per day

**PM Signature Signature**

**Date:**

**Coach/Supervisor Signature**

**Date:**

**EXHIBIT O**

**GEOPHYSICAL SURVEY AND GEOPROBE ASSESSMENT AREA**

**KEYNOTES**

- 1. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 2. APPROXIMATE LOCATIONS OF UTILITIES ARE SHOWN FOR INFORMATION ONLY. EXISTING UTILITIES SHOULD BE LOCATED BY FIELD SURVEY.
- 3. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 4. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 5. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 6. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.

**NOTES**

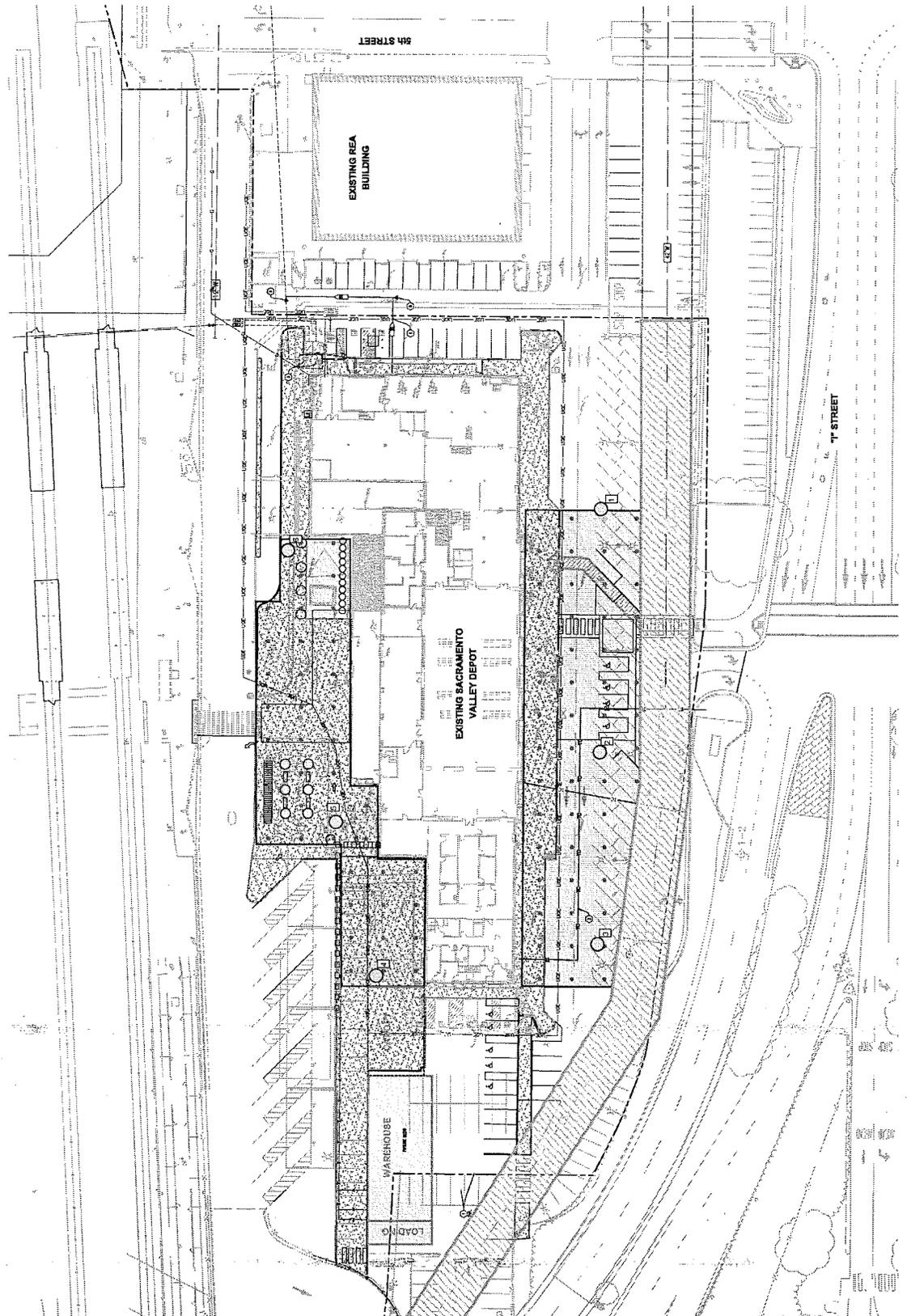
- 1. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 2. APPROXIMATE LOCATIONS OF UTILITIES ARE SHOWN FOR INFORMATION ONLY. EXISTING UTILITIES SHOULD BE LOCATED BY FIELD SURVEY.
- 3. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 4. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 5. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 6. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.

**EXISTING SITE IMPROVEMENT NOTES**

- 1. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
- 2. APPROXIMATE LOCATIONS OF UTILITIES ARE SHOWN FOR INFORMATION ONLY. EXISTING UTILITIES SHOULD BE LOCATED BY FIELD SURVEY.
- 3. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.
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- 6. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA.

	SCAN SOIL SAMPLE
	SCAN WATER & SOIL SAMPLE
	WATER MAIN CLEARANCE ZONE
	POTENTIAL WELL
	TEST WELL

Proposed Openholes with Crabs  
Groundwater samples and logs to one soil  
sample based Geophysical survey  
results (20 feet depth)





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/24/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alliant Insurance Services, Inc. 333 South Hope Street, Suite 3750 Los Angeles CA 90071	CONTACT NAME:	
	PHONE (A/C, No., Ext): 213-443-2440	FAX (A/C, No):
INSURED Rudolph and Sletten, Inc 1600 Seaport Blvd Suite 350 Redwood City CA 94063	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A :American Zurich Insurance Co	NAIC # 40142
	INSURER B :Zurich American Insurance Company	16535
	INSURER C :ACE Property & Casualty Insurance C	20699
	INSURER D :American Zurich Insurance Company	40142
	INSURER E :	
	INSURER F :	

**COVERAGES**

CERTIFICATE NUMBER: 1109200767

REVISION NUMBER:

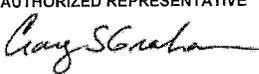
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC		GLO654236302	5/31/2013	5/31/2014	EACH OCCURRENCE	\$2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$2,000,000
						GENERAL AGGREGATE	\$4,000,000
						PRODUCTS - COMP/OP AGG	\$4,000,000
							\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		BAP654236202	5/31/2013	5/31/2014	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
C	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE  DED RETENTION \$		XOOG27042090	5/31/2013	5/31/2014	EACH OCCURRENCE	\$10,000,000
						AGGREGATE	\$10,000,000
							\$
A D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	WC654236504 (EXCEPT WI) WC0980600403 (WI)	5/31/2013 5/31/2013	5/31/2014 5/31/2014	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1000000
						E.L. DISEASE - EA EMPLOYEE	\$1000000
						E.L. DISEASE - POLICY LIMIT	\$1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Job Name: City of Sacramento On-Call Services. Address: "\*\*\*\*\*ALL AREAS LOCATED WITHIN SACRAMENTO CITY LIMITS\*\*\*\*\*"  
Sacramento, CA. Job Number: TBD-0. The City of Sacramento, its officials, employees and volunteers are included as additional insured with respect to general liability and automobile liability where required by written contract. A waiver of subrogation is granted in favor of the additional insured with respect to workers compensation policy where required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

City of Sacramento, California c/o Ebix BPO PO Box 257, Ref #106-Z327720 Portland MI 48875-0257	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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ZURICH<sup>®</sup>

## Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO654236302	5/31/13	5/31/14	5/31/13			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** Tutor Perini Corporation and related entities

**Address (Including ZIP Code):**

This endorsement modifies insurance provided under the:

### Commercial General Liability Coverage Part

- A. Section II – **Who is An Insured** is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement.
- B. The insurance provided to the additional insured person or organization applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under Section I – **Coverage A – Bodily Injury And Property Damage Liability** and Section I – **Coverage B – Personal And Advertising Injury Liability**, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - 1. Your acts or omissions; or
  - 2. The acts or omissions of those acting on your behalf,
 and resulting directly from your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.
- C. However, regardless of the provisions of Paragraphs A. and B. above:
  - 1. We will not extend any insurance coverage to any additional insured person or organization:
    - a. That is not provided to you in this policy; or
    - b. That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
  - 2. We will not provide Limits of insurance to any additional insured person or organization that exceed the lower of:
    - a. The Limits of Insurance provided to you in this policy; or
    - b. The Limits of Insurance you are required to provide in the written contract or written agreement.
- D. The insurance provided to the additional insured person or organization does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:
  - 1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - 2. Supervisory, inspection, architectural or engineering activities.

- E. The additional insured must see to it that:
1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
  2. We receive written notice of a claim or "suit" as soon as practicable; and
  3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured, if the written contract or written agreement requires that this coverage be primary and non-contributory.
- F. For the coverage provided by this endorsement:
1. The following paragraph is added to Paragraph 4.a. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:  
This insurance is primary insurance as respects our coverage to the additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory with respect to any other policy upon which the additional insured is a Named Insured. In that event, we will not seek contribution from any other such insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.
  2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:  
This insurance is excess over:  
Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.
- G. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

All other terms and conditions of this policy remain unchanged.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

## Schedule

**Name of Person or Organization:**

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION.

*You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work for this project as there may be an additional premium for this endorsement. This premium must be in accordance with the manual rules of the Workers' Compensation Insurance Rating Bureau.*

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective: 5/31/13

Policy No. WC654236504

Endorsement No.

Insured: Tutor Perini Corporation and related entities

Premium:

Insurance Company: American Zurich Insurance Company

