

## Invitation For Bids

**DATE:** September 2010

**PROJECTS:** Aster Park Apartments in Sunnyvale, CA

**DEVELOPER:** Mid-Peninsula Housing Coalition (Developer) is a private, not-for profit developer and manager of affordable and low-income rental housing communities in the San Francisco and Monterey Bay Areas

**PROJECT SUMMARY:**

Developer is issuing this Invitation For Bids to encourage general contractors to submit bids to perform rehabilitation work at Aster Park Apartments in Sunnyvale, California. Because the Aster Park rehabilitation project is being partially funded by Federal HOME funding through the City of Sunnyvale, all Bids and Work will be subject to Federal Davis-Bacon provisions. The Work will include a variety of different activities, including, but not limited to, the following:

- 1) Rehabilitation of building exteriors or interiors;
- 2) Site improvements;
- 3) Common area facility renovation; and
- 4) Other improvements, as identified by Developer.

**SITE LOCATION:**

Aster Park Apartments  
1059 Reed Avenue  
Sunnyvale, CA

## INSTRUCTIONS TO BIDDERS

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## INSTRUCTIONS TO BIDDERS

- 1. Preparation of Bid** – Bid shall be primarily made on Bid Forms, which include the documents entitled Construction Budget Template, Experience Forms, and Submission Declaration under Exhibits C, D, and E, respectively, to this Invitation for Bids. Bidder shall enter all requested information in the appropriate spaces on the Bid Forms. In addition, Bidder shall submit a List of Subcontractors described in Section 7 below, as well as Bidder's most recent Audited Financial Statements. All costs of bid preparation shall be borne by the Bidder.
- 2. Mandatory Qualifications** - In order for a bid to be considered responsive to this invitation for bids, the minimum experience of the bidder shall be the completion of five (5) projects of similar nature, scope and value not less than \$750,000. Documentation of mandatory qualifications shall be made on the document entitled "Experience Forms Template" included as Exhibit D in the Bid Forms.
- 3. Examination of Bid Documents** – The Bid Documents consist of this Invitation For Bids, each and every document listed in the Table of Contents of the Invitation For Bids, and any addenda which may have been issued. Bidder shall thoroughly examine and be familiar with all Bid Documents, including legal and procedural aspects. Submission of a bid shall constitute bidder's acknowledgment upon which Developer may rely that bidder has thoroughly examined and is familiar with the Bid Documents. Failure or neglect of bidder to receive or examine all or part of the Bid Documents shall in no way relieve the bidder from any obligations with respect to this bid invitation or any resultant contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any part of the Bid Documents.
- 4. Inspection of Site** - Bidder shall attend a Site Job Walk on **October 5<sup>th</sup> at 1:00** at Aster Park (address above). Bidder must examine and judge for itself the location of the proposed work and the nature and extent of the work to be done. Bidder is required to inspect the project location to satisfy itself, by examination or other appropriate means, of the actual conditions at the site. Submission of a bid shall constitute a representation by bidder that it has visited and examined the project site and is relying on its own examination and knowledge of the site in making its bid, and not on any representation by Developer. No claim for additional compensation shall be allowed that is based upon a failure to examine, or lack of knowledge of, the work site.
- 5. Employment of Apprentices** – The provisions of Sections 1777.5 and 1777.6 of the California Labor Code concerning the employment of apprentices are applicable during the performance of the work described in the bid documents.
- 6. Wage Rates** – All Bids and Work shall be subject to Federal Davis-Bacon Prevailing Wage Rates. Successful bidder shall pay not less than the prevailing rate of per diem wages as determined by the Federal Office of Labor Relations. Wage rates can be obtained through the City's Website at:

<http://www.hud.gov/offices/olr/index.cfm>

The successful bidder/contractor, and each subcontractor shall keep accurate payroll records, and comply in all respects with Federal Davis-Bacon provisions, confirm that "All pricing is based on Davis-Bacon wage rates", and submit HUD Form 2554 as part of the construction billing process.

Bidders shall promptly notify the person identified on the cover page of this bid invitation, in writing, about all labor classifications not listed in the prevailing wage determinations but necessary for the performance of the work described in the bid documents.

**7. Subcontractors-**

Bidder shall complete a List of Subcontractors. Bidder shall include all contact information for each subcontractor who will perform work or render service to the bidder during the performance of the work described in the bid documents and any subcontractor licensed by the State who, under subcontract to the bidder, specially fabricates and installs a portion of the work or improvements described in the bid documents. Bidder shall complete the List in each instance where the amount of the subcontractor's work is in excess of one-half of one percent (.5%) of the bidder's total bid, or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent (.5%) of the total bid or ten thousand dollars (\$10,000), whichever is greater.

**8. Bid Price** – Any items shown in the Scope of Work and Technical Specifications and not specifically listed in the bid price are to be considered included; and no additional or special compensation will be allowed.

Bid price shall include all costs for:

- a. Furnishing all tools, equipment, materials, apparatus, facilities, labor, transportation, supervision and management necessary to perform the work described in the bid documents;
- b. Providing the necessary safety precautions for the protection of the public, such as barricades and warning signs;
- c. Cleanup activities to restore the work site to a satisfactory condition;
- d. Federal, state and local taxes;
- e. All permits and licenses required to perform the work described in the bid documents.

**9. Submission of Bid** – Bidder shall submit one (1) copy of the completed Bid Forms to Developer by **October 19th at 3:00**, (Submission Deadline) to the attention of **Bruce Brackett/Facilities Manager**. Submissions must be faxed to 650-299-8034 or emailed to [bbrackett@midpen-housing.org](mailto:bbrackett@midpen-housing.org).

All submissions must include all Bid Forms as described in #1- Preparation of Bid above.

All submissions must include the full business address of the bidder and be signed by bidder. Submissions by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Qualifications by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. When requested by Developer, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.

**10. Modification or Withdrawal of Bids**

- a. Before Date and Time for Receipt of Bids - Bids that contain mistakes discovered by a bidder before the date and time for receipt of bids may be modified if received prior to the deadline. Any modification shall be clearly identified as such and shall be made in writing, executed and submitted in the same form and manner as the original bid.
- b. After Date and Time for Receipt of Bids - A bidder may not change its bid after the date and time set for receipt of bids except that the bidder may seek Developer's consent to the substitution of a subcontractor where the bidder can demonstrate that the name of the substituted subcontractor was listed as the result of an inadvertent clerical error.

**11. Postponement of Opening; Extensions** - Developer reserves the right to postpone the date and time for receipt of bids at any time prior to the date and time announced in the Invitation For Bids. The date and time shall be extended by at least 72 hours in the event Developer issues

any material changes, additions or deletions to the bid documents within 72 hours prior to the bid closing.

**12. Late Bids** - Bidder shall be responsible for the timely delivery of bid. Bids received after the deadline for receipt of bids shall not be accepted.

**13. Bid to Remain Open** - The bidder shall guarantee its bid for a period of sixty (60) calendar days from the date of bid opening.

**14. Bid Evaluation** – Developer will evaluate all bids received to determine if the bidder is responsive and responsible. A bidder will be deemed to be responsive if it has submitted a bid that conforms in all material respects to the requirements of the bid documents and demonstrates compliance with the mandatory experience. A bidder will be deemed to be responsible if the Bidder:

- a. Has the ability, capacity, experience and skill to perform the work in accordance with the bid specifications.
- b. Has the ability to perform the work promptly or within the time specified, without delay;
- c. Has equipment, facilities and resources of such capacity and location to enable it to perform the work;
- d. Has a record of satisfactory or better performance under prior contracts with the Developer or others; and
- e. Has complied with laws, regulations, guidelines and orders governing prior or existing contracts.

**15. Discrepancies in Bid Forms** - If there are unit price bid items in a bid schedule, and the amount indicated for a unit price bid item does not equal the product of the unit price and quantity listed, the unit price shall govern and the amount shall be adjusted accordingly. Likewise, if there is more than one bid item in a bid schedule, and the total of the schedule does not equal the sum of the bid items, the individual amounts of the bid items shall govern and the total shall be adjusted accordingly. If there is a difference between the bid price entered in words and the bid price entered in figures for the same quotation, the price in words shall prevail.

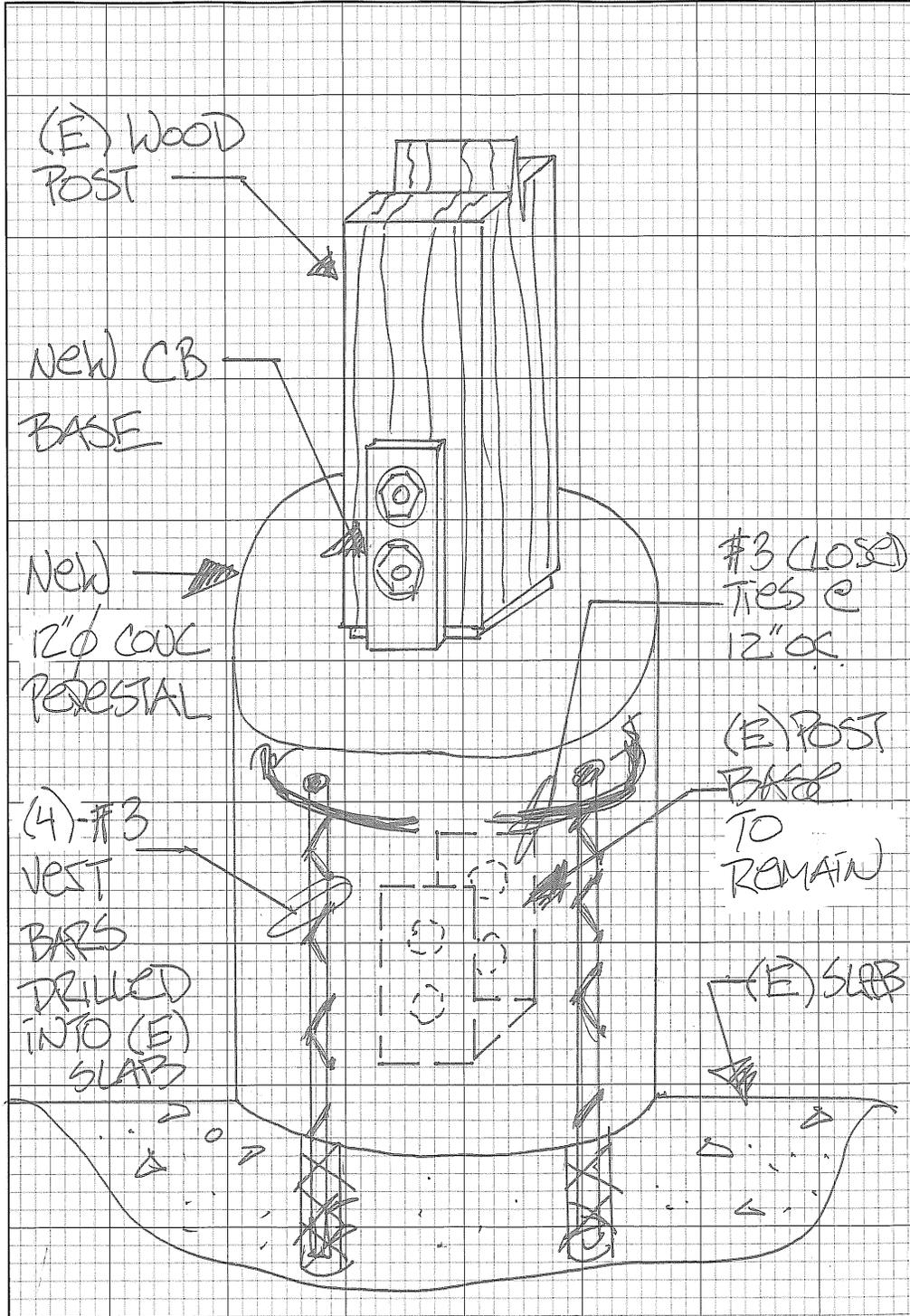
**16. Rejection of Bids** - Developer reserves the right to reject any and all bids; and further reserves the right to reject any bids that are found to be non-responsive or submitted by a bidder that is not responsible.

## Exhibit A Scope of Work and Technical Specifications

ID	Item	Scope	Specification
1	<b>Window and slider replacement</b>	All windows and doors will be replaced with new construction, fin type window. Existing trim or stucco to be removed, to allow removal of existing window and installation of new window and flashing. Replace trim or patch stucco. Contractor must submit certification of recycle for disposal of old window and slider units.	Milgard; Tuscany
2	<b>Kitchen Cabinets</b>	Replace all unit kitchen cabinets with same as existing layout. Contractor must submit certification of recycle for disposal of existing units.	Armstrong; Calibra--chestnut
3	<b>Kitchen Counters, Sinks, Disposals, Faucets</b>	Replace existing counter tops, sinks, garbage disposals, and faucets. Recycle existing materials as required under contract.	VT Industries, color-Granite; 22x33 22 gauge stainless steel, Badger 5, Moen Chateau, single handle chrome.
4	<b>Range Hood</b>	Replace range hood. Recycle existing hood	Whirlpool White 30" 1 UXT 2030AAW
5	<b>GFCI Installation</b>	Install GFCI circuits at kitchen counters and bath vanities. Includes replacing existing wiring to add a ground wire.	
6	<b>Drywall Repairs</b>	Numerous unit ceilings have been damage by past water leaks and were not repaired appropriately. Largest patch is approx. 5'x8', half are less than 4'x8'. Includes opening ceiling (asbestos containing material), installing new drywall, tape, texture to match, and paint entire kitchen ceiling.	Kelly Moore, Suisse Coffee, low VOC semi gloss
7	<b>Kitchen Light Fixtures</b>	Replace existing fixtures with new. Recycle old fixtures	4' T8, electronic ballast, enrgy star fixtures. Includes 2-32" T8 lamps
8	<b>Kitchen Flooring</b>	Remove and replace existing kitchen flooring	Armstrong; Aurora 91
9	<b>Bathroom Vanities</b>	Replace all unit bath vanities with same as existing size and layout. Contractor must submit certification of recycle for disposal of existing units.	Armstrong; Calibra--chestnut
10&11	<b>Vanity Tops</b>	Replace existing top with new, recycle existing	Cultured marble top with intregal bowl; 3" minimum backsplash; solid white *****
12	<b>Bathroom Wall Sconce</b>		
13	<b>Bath Exhaust/Humidistat</b>	Replace existing fixture with fan/light combo. Includes humidistat control. Recycle existing	Broan-Nutone 110 CFM - 0.9 Sones humidity activated sensor.
14	<b>Carpet</b>	Replace existing carpet	Mohawk; Regents Park II, Boardwalk
15	<b>Furnace Units</b>	Replace existing furnace units, recycle existing	*****
16	<b>ADA Common Areas</b>	Install new 36" doors including enlargement of opening as required. Includes all interior common doors off lobby. Add ADA approved grab bars in restrooms and insulated sink waste lines according to ADA minimum dimensions. Doors to include ADA lever hardware.	Solid wood Birch finish 6 panel doors. Hardware-Schlage Commercial Elan, keyed to existing master key.
17	<b>Replace Existing Lobby Entries</b>	Replace lobby entries on both sides with storefront glass systems.	Von Duprin Panic Hardware, Stainless, match existing master key
18	<b>ADA Compliance Concrete</b>	Remove and replace existing concrete to establish ADA requirement ramp from ADA parking stall area.	
19	<b>Siding, Trim Repairs</b>	Replace all damaged trim and siding areas per Professional Exterminators termite report, dated 3-10-09; also include total replacement of T1-11 siding on North side of buildings 3 and 5. Includes prime all sides and 2 coats at end cuts; paint to match.	
20	<b>Exterior Stairs</b>	Cut bottoms of each stair stringer and set on pressure treated 4x8. Match construction of sample in field.	
21	<b>Concrete Footings</b>	Cut bottoms of each balcony column, set on new concrete pedestal per Morris Engineering structural drawing.	
22	<b>Roof Repairs</b>	Flat roofs to be cleared of all debris, install new roof drain screens and install new pads & blocks to reset existing piping and conduit as required.	
23	<b>Composition Roofing</b>	Replace composition shingles at patio roofs on building 10, water heater closets, and first floor unit entries.	30 year composition to match existing roofs.
24	<b>Solar Water Preheat</b>		*****
25	<b>Blown in Insulation</b>	Add 6" blown in, loose cellulose to R-38.	



Unit	1	1	2	3	3	3	3	4	5	6	6	6	8	8	10	11	11	12	13	13	14	15	16	16	17	18	18	19	19	20	21	21	22	22	22	23	23	25			
	Windows	Slider Doors	Kitchen Cabs	Kitchen counter top	Kitchen Sink	Garbage Disposal	Kitchen Faucets	Range Hood	Upgrade GFC	Drywall Repair	Paint @ Repair	Kitchen Light Fixture	Kitchen Flooring	Bathroom Cabinet	Vanity	Sink Tops	Bathroom Faucets	Bathroom Wall Sc	Bath Exhaust Fans	Humidistats	Carpet	Heating Units	ADA Doors @ Clu	ADA Compliant Ha	Storfront @ Office	ADA Compliance	Exterior Siding /Trim	Fascia & Trim	Paint New Siding	Exterior Stairs	Exterior Columns	Concrete Footings	Roof Repairs	Roof Drain Grates	Roof Blocks / Con	Composition Shing	Solar- Preheat Par	Blown in Insulation			
69	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																					
70	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																				
71	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																				
72	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
73	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
74	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
75	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
76	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
77	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
78	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
79	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
80	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
81	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
82	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
83	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
84	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
85	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
86	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
87	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
88	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
89	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
90	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
91	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
92	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
93	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
94	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
95	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X																			
Clubhouse																																									
BLD # 1																						X	X	X	X															X	
BLD # 2																							X	X																	
BLD # 3																							X	X																	
BLD # 7																																									
BLD # 8																																									X
BLD # 9																																									X
BLD # 10																																									
BLD # 11																																									X
BLD # 14																																									X
BLD # 12																																									X
BLD # 13																																									X
BLD # 14																																									X
5 Flat Roofs																																									X
BLD # 10																																									X
Front of Building																																									X



 <b>MORRIS ENGINEERING</b> CONSULTING ENGINEERS		DATE:	PAGE #
	1300 INDUSTRIAL ROAD, SUITE 14 SAN CARLOS, CA 94070	(850) 595-2973 FAX (850) 595-2980	JOB #:

**Exhibit B  
Additional Information**

**Please see attached Termite Report 2009 and Lead and Asbestos Report.**

# WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
	1059 REED AVENUE	SUNNYVALE	94086	3-10-09	6



## PROFESSIONAL EXTERMINATORS

OF NORTHERN CALIFORNIA  
P.O. BOX 797  
SHASTA LAKE, CA 96019

FIRM LICENSE # PR3406

1-800-95-PESTS  
REPORT#20500-RN



Ordered by: <b>PAUL DALTAS SURVEYS, INC.</b>	Property Owner and/or Party of Interest: <b>C/O PAUL DALTAS</b>	Report sent to: <b>C/O PAUL DALTAS</b>
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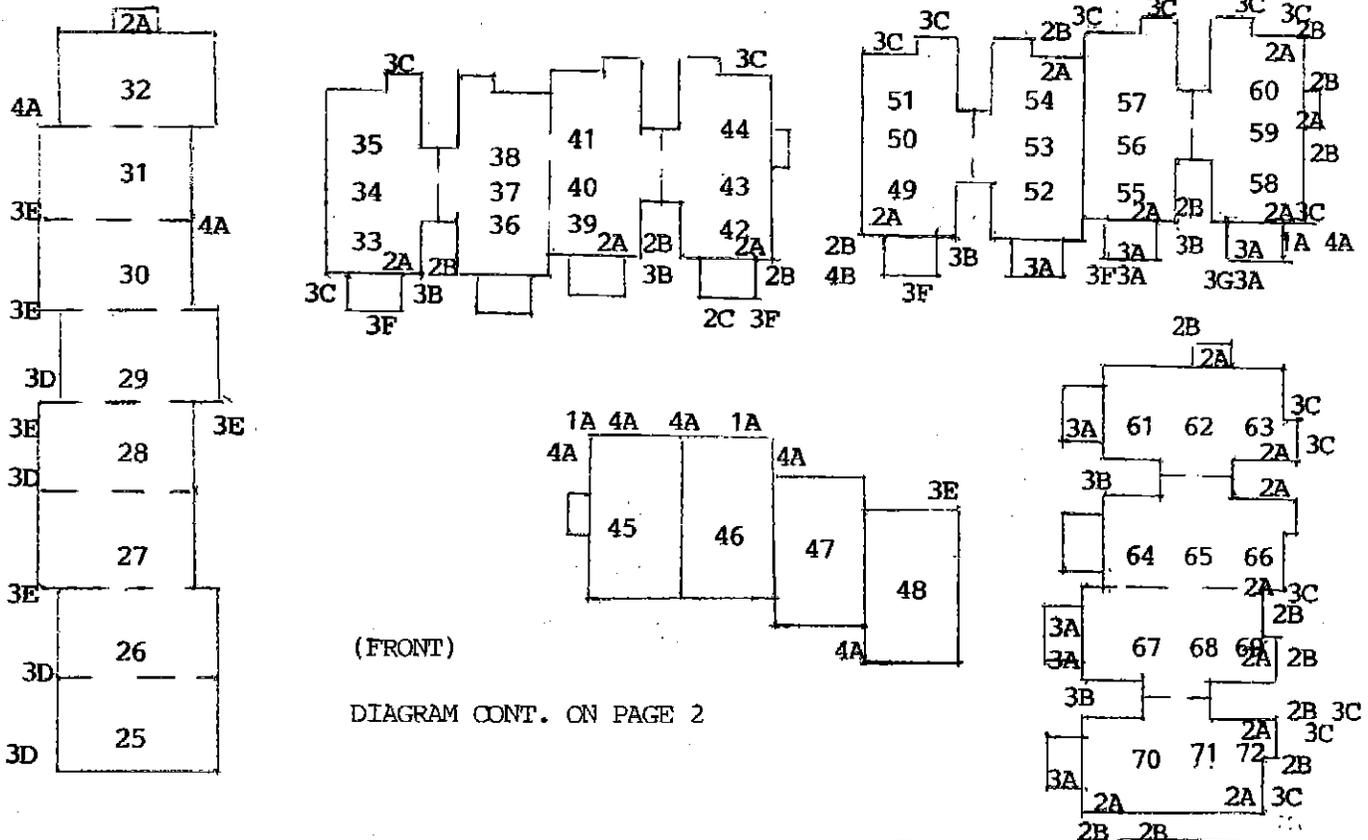
COMPLETE REPORT   
  LIMITED REPORT   
  SUPPLEMENTAL REPORT   
  REINSPECTION REPORT

General Description: TWO AND THREE FRAME AND STUCCO APARTMENT BUILDINGS WITH COMPOSITION AND HOT MOP ROOFS.	Inspection Tag Posted: <b>OFFICE WATER HEATER ROOM</b>
	Other Tags Posted: NONE FOUND

An inspection has been made of the structure(s) shown on the diagram in accordance with the Structural Pest Control Act. Detached porches, detached steps, detached decks and any other structures not on the diagram were not inspected.

Subterranean Termites    
 Drywood Termites    
 Fungus / Dryrot    
 Other Findings    
 Further Inspection

If any of the above boxes are checked, it indicates that there were visible problems in accessible areas. Read the report for details on checked items.



Inspected by: RICH NORRUP      State License No. OPR 9200      Signature [Signature]

You are entitled to obtain copies of all reports and completion notices on this property reported to the Structural Pest Control Board during the preceding two years. To obtain copies contact: Structural Pest Control Board, 1418 Howe Avenue, Suite 18, Sacramento, California, 95825-3204.  
 NOTE: Questions or problems concerning the above report should be directed to the manager of the company. Unresolved questions or problems with services performed may be directed to the Structural Pest Control Board at (916) 561-8708, (800) 737-8188 or [www.pestboard.ca.gov](http://www.pestboard.ca.gov).

Address of  
Property  
Inspected

1059 REED AVENUE

SUNNYVALE 94086

Bldg. No.

Street

City

RICH NORRUP

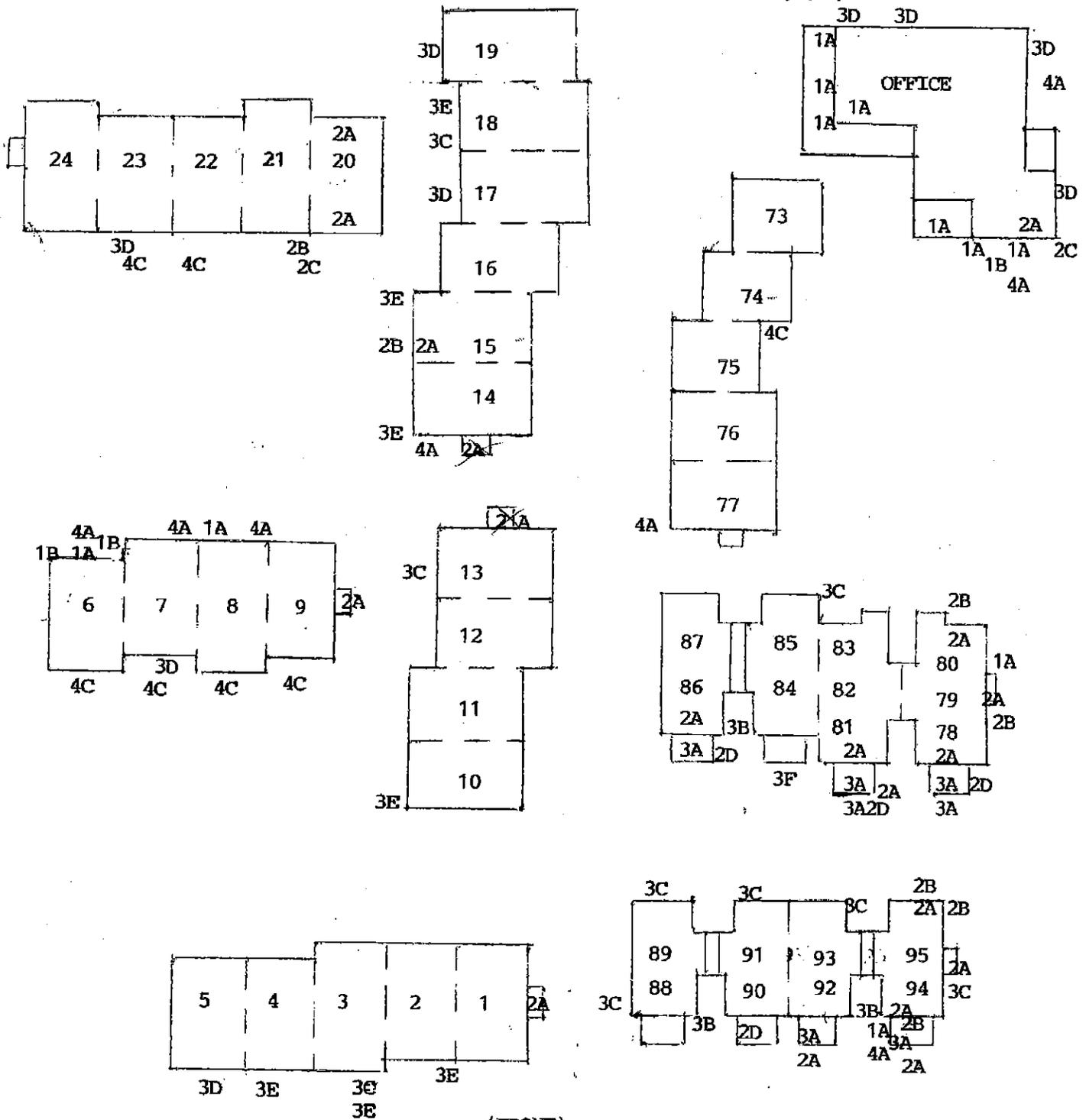
3-10-09

20500-RN

Inspector

Date of Inspection

Company Report No.



(FRONT)  
DIAGRAM NOT TO SCALE



**FOURTH PAGE OF STANDARD INSPECTION REPORT OF THE PROPERTY LOCATED AT:**

Address of Property Inspected	1059 REED AVENUE	SUNNYVALE 94086	
	Bldg. No.	Street	City
	RICH NORRUP	3-10-09	20500-RN
	Inspector	Date of Inspection	Company Report No.

**2. DRYWOOD TERMITES...CONTINUED...**

FINDING 2B. DRYWOOD TERMITE DAMAGE WAS NOTED AT SIDING AND TRIM.	<b>SECTION 1</b>
RECOMMENDATION 2B. REPLACE AND/OR REPAIR TERMITE DAMAGED SIDING AND TRIM.	<b>5,000.00</b>

FINDING 2C. DRYWOOD TERMITE DAMAGE WAS NOTED AT FASCIA AND RAFTER IN EAVES.	<b>SECTION 1</b>
RECOMMENDATION 2C. REPLACE AND/OR REPAIR TERMITE DAMAGED TIMBERS IN EAVES.	<b>800.00</b>

FINDING 2D. DRYWOOD TERMITE DAMAGE WAS NOTED AT BALCONY FRAMES AND DECKING.	<b>SECTION 1</b>
RECOMMENDATION 2D. REPLACE AND/OR REPAIR TERMITE DAMAGED TIMBERS AT BALCONIES.	<b>3,600.00</b>

**3. FUNGUS / DRYROT...**

FINDING 3A. FUNGUS & TERMITE DAMAGE WAS NOTED AT BASE OF BALCONY SUPPORTS.	<b>SECTION 1</b>
RECOMMENDATION 3A. CUT UP BASE OF SUPPORTS ONE FOOT HIGH, ATTACH METAL BRACKETS FROM EXISTING BRACKETS TO POST AND POUR A NEW FOOTING TO BASE OF POST.	<b>7,200.00</b>

FINDING 3B. FUNGUS DAMAGE WAS NOTED AT STAIR FRAMES AND RAILINGS.	<b>SECTION 1</b>
RECOMMENDATION 3B. REPLACE FUNGUS DAMAGED STAIR FRAMES WITH PRESSURE TREATED TIMBERS. METAL BRACKETS WILL BE INSTALLED AT CONCRETE TO RAISE NEW FRAMES OFF OF CONCRETE WALKWAYS. REPLACE FUNGUS DAMAGED RAILINGS AS NEEDED.	<b>8,400.00</b>

FINDING 3C. FUNGUS DAMAGE WAS NOTED AT EXTERIOR TRIM BOARDS.	<b>SECTION 1</b>
RECOMMENDATION 3C. REPLACE FUNGUS DAMAGED TRIM BOARDS AS NEEDED AND TREAT ADJACENT TIMBERS WITH FUNGICIDE TIMBOR.	<b>6,200.00</b>

FINDING 3D. FUNGUS DAMAGE WAS NOTED AT EXTERIOR PLYWOOD SIDING.	<b>SECTION 1</b>
RECOMMENDATION 3D. REPLACE FUNGUS DAMAGED SIDING AS NEEDED. SOME AREAS WILL BE CUT UP AND REPLACED USING Z-BAR FLASHINGS AT JOINTS. TREAT ADJACENT WALL FRAMING WITH FUNGICIDE TIMBOR WHERE FUNGUS INFECTIONS ARE FOUND.	<b>5,600.00</b>

FINDING 3E. FUNGUS DAMAGE WAS NOTED AT FASCIA BOARDS IN EAVES.	<b>SECTION 1</b>
RECOMMENDATION 3E. CUT OUT AND REPLACE FUNGUS DAMAGED FASCIA BOARDS AS NEEDED.	<b>2,400.00</b>

FINDING 3F. FUNGUS DAMAGE WAS NOTED AT BALCONY RAILINGS.	<b>SECTION 1</b>
RECOMMENDATION 3F. REPLACE FUNGUS DAMAGED RAILINGS AS NEEDED.	<b>750.00</b>

FINDING 3G. FUNGUS DAMAGE WAS NOTED AT ROOF SHEATHING OF BALCONY COVER.	<b>SECTION 1</b>
RECOMMENDATION 3G. CUT OUT AND REPLACE FUNGUS DAMAGED ROOF SHEATHING FROM THE TOP OF THE ROOF. A LICENSED ROOFER MAY NEED TO BE CONTACTED TO RESEAL ROOF COVERINGS; NOT INCLUDED IN THIS ESTIMATE.	<b>450.00</b>



Address of  
Property  
Inspected

1059 REED AVENUE

SUNNYVALE 94086

Bldg. No.

Street

City

RICH NORRUP

3-10-09

20500-RN

Inspector

Date of Inspection

Company Report No.

**ADDITIONAL NOTES AND REMARKS...**

- 1) THIS COMPANY DOES NOT INSPECT AND/OR CERTIFY ROOFING AND/OR PLUMBING AND ASSUMES NO RESPONSIBILITY AND MAKES NO GUARANTEES FOR SAME. IF ADDITIONAL INFORMATION IS NEEDED REGARDING THE CONDITION OF ROOFING AND/OR PLUMBING WE SUGGEST A LICENSED CONTRACTOR IN THAT FIELD BE CONTACTED TO INSPECT AND/OR CERTIFY AS NEEDED.
- 2) THIS COMPANY DOES NOT RE-INSPECT AND/OR CERTIFY RECOMMENDED CHEMICAL APPLICATIONS WHICH HAVE BEEN PERFORMED BY OTHERS.
- 3) THIS COMPANY ASSUMES NO RESPONSIBILITY FOR CONDITIONS WHICH MAY EXIST WITHIN INACCESSIBLE AREAS AND/OR AREAS NOT INSPECTED OR INCLUDED IN THIS REPORT.
- 4) FINDINGS ON THE DIAGRAM REPRESENT THE APPROXIMATE LOCATION OF CONDITIONS. THE DIAGRAM SHOULD NOT BE USED TO DETERMINE THE EXACT LOCATION OF FINDINGS.
- 5) THIS COMPANY SHALL NOT BE RESPONSIBLE FOR DAMAGE TO HIDDEN PIPES OR CONDUIT THAT MAY BE CAUSED DURING THE COURSE OF RECOMMENDED WORK.

TIMBERS REPLACED BY THIS COMPANY SHALL BE PRIMERED ONLY. THIS COMPANY SHALL NOT BE RESPONSIBLE FOR PAINTING OR STAINING.

**"NOTICE: Reports on this structure prepared by various companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.) However, recommendations to correct these findings may vary from company to company. You have the right to seek a second opinion from another company."**

**\*Guarantee\*** ALL WORK PERFORMED BY THIS COMPANY IS GUARANTEED FOR A PERIOD OF ONE YEAR...

EXTENDED GUARANTEES ARE AVAILABLE BY ACCEPTANCE OF OUR ANNUAL CONTROL SERVICE AGREEMENT...

**\*\*NOTICE TO OWNER\*\*** UNDER THE CALIFORNIA MECHANICS LIEN LAW, ANY STRUCTURAL PEST CONTROL COMPANY WHICH CONTRACTS TO DO WORK FOR YOU, ANY CONTRACTOR, SUBCONTRACTOR, LABORER, SUPPLIER OR OTHER PERSON WHO HELPS TO IMPROVE YOUR PROPERTY, BUT IS NOT PAID FOR HIS OR HER WORK OR SUPPLIES, HAS THE RIGHT TO ENFORCE A CLAIM AGAINST YOUR PROPERTY. THIS MEANS THAT AFTER A COURT HEARING, YOUR PROPERTY COULD BE SOLD BY A COURT OFFICER AND THE PROCEEDS USED TO SATISFY THE INDEBTEDNESS. THIS CAN HAPPEN EVEN IF YOU HAVE PAID YOUR STRUCTURAL PEST CONTROL COMPANY IN FULL IF THE SUBCONTRACTOR, LABORERS OR SUPPLIERS REMAIN UNPAID.

TO PRESERVE THEIR RIGHT TO FILE A CLAIM OR LIEN AGAINST YOUR PROPERTY CERTAIN CLAIMANTS SUCH AS SUBCONTRACTORS OR MATERIAL SUPPLIERS ARE REQUIRED TO YOU WITH A DOCUMENT ENTITLED "PRELIMINARY NOTICE"; PRIME CONTRACTORS AND LABORERS FOR WAGES DO NOT HAVE TO PROVIDE THIS NOTICE. A PRELIMINARY NOTICE IS NOT A LIEN AGAINST YOUR PROPERTY, IT'S PURPOSE IS TO NOTIFY YOU OF PERSONS WHO MAY HAVE A RIGHT TO FILE A LIEN AGAINST YOUR PROPERTY IF THEY ARE NOT PAID.

PESTICIDES TO BE USED:  **TIM-BOR** - active ingredient: DISODIUM OCTABORATE TETRAHYDRATE-98%, EPA. Reg. No. 1624-39

**DEMON-TC** - active ingredient: CYREPMIHRIN-25.3%, EPA. Reg. No. 10182-107

**TERMIDOR SC** - active ingredient: FIPRONIL-9.1%, EPA. Reg. No. 7969-210

**COPPER NAPHTHENATE** - active ingredient: COPPER NAPHTHENATE-20%, EPA. Reg. No. 962-353-A

State law requires that you be given the following information: **CAUTION - PESTICIDES ARE TOXIC CHEMICALS.**

Structural Pest Control Operators are licensed and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the California Department of Food and Agriculture and the United States Environmental Protection Agency. Registration is granted when the state finds that based on existing scientific evidence there are no risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or Poison Control Center (800) 876-4766.

For further information, contact any of the following:

**PROFESSIONAL EXTERMINATORS: 800-95-PESTS**

**COUNTY HEALTH DEPARTMENT:** (530) 225-5591, for health questions.

**COUNTY AGRICULTURAL COMMISSIONER:** (530) 224-4949, for application information.

**THE STRUCTURAL PEST CONTROL BOARD:** (800) 737-8188, for regulatory information. 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815-3831

# ADVANTAGE

ENVIRONMENTAL AND SAFETY SERVICES INC.

January 12, 2005

Mr. Bruce Brackett  
Construction and Facilities  
Mid-Peninsula Housing Coalition  
658 Bair Island Road, Suite 300  
Redwood City, CA 94063

RE: Asbestos/Lead Inspection Report  
Aster Park Apartments, Sunnyvale

Dear Mr. Brackett,

ADVANTAGE Environmental and Safety Services, Inc. recently performed a limited inspection of the Aster Park Apartments, 1059 Reed Avenue, in Sunnyvale, CA. The inspection was requested in an attempt to determine if the construction materials contain asbestos and/or lead and if so where the materials are located. This complex consists of 95 dwelling units. Five units were selected to be representative of the site. During the inspection samples were collected of the various construction materials and architectural finishes such as texture coat on walls, sheetrock, tape joint compound, floor tile, floor tile mastic, baseboard, and baseboard glue. Paint samples were also collected to determine lead content.

## ASBESTOS

The bulk asbestos samples were submitted to Schneider Laboratory for analysis using Polarized Light Microscopy (PLM) which is the method recommended by the Environmental Protection Agency (EPA) for determining asbestos in bulk materials. Table 1 represents the results provided by the lab. Complete copies of the laboratory reports are attached.

**Table 1**  
Asbestos Results

<b>Sample #</b>	<b>Material Sampled</b>	<b>Asbestos %</b>
19-1	Closet – sheetrock and tape joint compound	<1% Chrysotile*
19-2	Closet – texture coat	2% Chrysotile
19-3	Entry – 12X12 floor tile	2% Chrysotile
19-4	Entry – black mastic	8% Chrysotile
19-5	Entry – baseboard	None Detected
19-6	Entry – baseboard glue	None Detected

Sample #	Material Sampled	Asbestos %
19-7	Master bedroom – sheetrock and tape joint compound	<1% Chrysotile*
19-8	Bedroom – sheetrock and tape joint compound	<1% Chrysotile*
25-1	Closet – sheetrock and tape joint compound	<1% Chrysotile*
25-2	Master bedroom – sheetrock and tape joint compound	<1% Chrysotile*
25-3	Bedroom – sheetrock and tape joint compound	<1% Chrysotile*
25-4	Bedroom – texture coat on sheetrock	3% Chrysotile
60-1	Closet - sheetrock and tape joint compound	<1% Chrysotile*
60-2	Laundry – 12X12 floor tile	None Detected
60-3	Closet - sheetrock and tape joint compound	<1% Chrysotile*
60-4	Bedroom – sheetrock and tape joint compound	<1% Chrysotile*
77-1	Closet - sheetrock and tape joint compound	<1% Chrysotile*
77-2	Closet – 12X12 floor tile	None Detected
77-3	Closet – texture coat on sheetrock	3% Chrysotile
77-4	Bedroom – sheetrock and tape joint compound	<1% Chrysotile*
77-5	Master bedroom - sheetrock and tape joint compound	<1% Chrysotile*
84-1	Closet - sheetrock and tape joint compound	<1% Chrysotile*
84-2	Master bedroom - sheetrock and tape joint compound	<1% Chrysotile*
84-3	Master bedroom – 12X12 floor tile	Not Analyzed
84-4	Master bedroom – black mastic under floor tile	5% Chrysotile
84-5	Master bedroom – baseboard	None Detected
84-6	Master bedroom – baseboard glue	None Detected
95-1	Closet - sheetrock and tape joint compound	<1% Chrysotile*
95-2	Master bedroom - sheetrock and tape joint compound	3% Chrysotile
95-3	Master bedroom – texture coat on sheetrock	2% Chrysotile
95-4	Kitchen – sheetrock and tape joint compound	<1% Chrysotile*
L-1	Laundry room – sheetrock and tape joint compound	<1% Chrysotile*
L-2	Laundry room – 12X12 floor tile	5% Chrysotile
L-3	Laundry room – black mastic under floor tile	7% Chrysotile

\* The sample results reported for the sheetrock and tape joint compound show the composite result. The individual layers typically contain more than one percent asbestos

Based on the laboratory report asbestos was detected in the texture coat on the sheetrock walls, joint compound on the walls, floor tile, and floor tile mastic. If other materials are discovered during the project that were not included as part of this report or inspection they must be sampled prior to disturbance.

## RECOMMENDATIONS - Asbestos

- The sample results provided should be applied to the entire facility unless there is sampling data collected from a specific area that contradicts this data.
- All flooring is assumed to contain asbestos unless specific sampling indicates otherwise.
- A properly licensed, registered, and trained asbestos contractor is required to perform the removal, if disturbing more than 100 square feet.
- If less than 100 square feet of materials containing asbestos will be disturbed anyone can perform the removal as long as they follow all applicable rules and regulations.
- If a material is to be removed, a scope of work should be written for the abatement contractor to follow.
- If other materials are discovered during a project that were not included as part of this report or inspection they must be sampled prior to disturbance or assumed to contain greater than one percent asbestos.

## LEAD

The paint samples were submitted to the same laboratory for analysis by Flame Atomic Absorption (AA). This is the method recommended for determining lead in construction materials. . Table 2 represents the paint sample results provided by the laboratory: Complete copies of laboratory reports are attached.

**Table 2**  
Lead Paint Results

<b>Sample Number</b>	<b>Sample Location</b>	<b>Lead PPM</b>
19-Pb-1	Bedroom – window sill	620
25-Pb-2	Master bedroom – window sill	80
L-Pb-3	Laundry room – wall	560
60-Pb-4	Bedroom – Paint on wall	1,370

The laboratory reports all samples contain detectable levels of lead. However, none of the results indicate that this is lead based paint. This property is subject to HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing as well as lead based paint standards as established by the California Department of Health Services (DHS), the Environmental Protection Agency (EPA), and Cal-OSHA.

## RECOMMENDATIONS - Lead

- The paint inspection performed is not considered to be a HUD compliant lead based paint inspection. Additionally, prior to any renovation activities, additional sampling may be required.
- A HUD compliant lead base paint inspection should be conducted and the facility records updated.
- If paint is discovered during the course of this project that was not included as part of the inspection samples should be collected to verify lead content.

Because the property was occupied at the time of the inspection, materials hidden within equipment, within walls, behind structures, in vertical shafts, on the exterior, in areas not included as part of this inspection or in areas that are not readily accessible to the inspector were not inspected or sampled. Any abatement activity must be in compliance with Local, State, and Federal regulations at all times, irrespective of the person performing the work. The inspection was limited to the materials sampled.

Please call me at (510) 507-6946 if there are any questions and/or clarifications regarding this report. ADVANTAGE takes great pride in offering our client consistent quality and full services from the first inspection throughout ongoing improvements. We look forward to working with you in the future.

Sincerely,

ADVANTAGE Environmental



Kristofer McGlothlin, President  
CAL-OSHA Certification #: 92-0324

Attachments: Laboratory Reports  
Sample Location Drawings

# SCHNEIDER LABORATORIES INCORPORATED

2512 W. Cary Street • Richmond, Virginia • 23220-5117  
804-353-6778 • 800-785-LABS (5227) • (FAX) 804-353-6928

*Excellence in Service and Technology*

AIHA/ELLAP 100527, NVLAP 101150-0, NYELAP/NELAC 11413, CAELAP 2078, NC 593

## LABORATORY ANALYSIS REPORT

Asbestos Identification by EPA Method 600/R-93/116

**ACCOUNT:** 2101-04-848  
**CLIENT:** Advantage Environmental  
**ADDRESS:** 35621 Beeching Lane  
Fremont, CA 94536

**DATE COLLECTED:** 11/11/2004  
**DATE RECEIVED:** 11/15/2004  
**DATE ANALYZED:** 11/18/2004  
**DATE REPORTED:** 11/18/2004

**PO NO.:**  
**PROJECT NAME:** 1059 Reed Avenue  
**PROJECT NO.:**  
**JOB LOCATION:** Sunnyvale

Client Sample No.	SLI Sample/ Layer ID	Sample Identification/ Layer Name	Asbestos Detected (Yes/No)	Sample Description
19-1	28248446	Closet		
	Layer 1:	Sheetrock	No	White, Powdery
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
	<b>2% Asbestos</b>			CHRYSTILE 2%
	<b>98% Non-Asbestos</b>			NON FIBROUS MATERIAL 98%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
	<b>&lt; 1% (Trace) Asbestos</b>			CHRYSTILE < 1%
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
19-2	28248447	Closet		
	Layer 1:	Texture	Yes	White, Granular
	<b>2% Asbestos</b>			CHRYSTILE 2%
	<b>98% Non-Asbestos</b>			NON FIBROUS MATERIAL 98%
19-3	28248448	Entry		
	Layer 1:	Floor Tile	Yes	White, Organically Bound
	<b>2% Asbestos</b>			CHRYSTILE 2%
	<b>98% Non-Asbestos</b>			NON FIBROUS MATERIAL 98%

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Client Sample No.	SLI Sample/ Layer ID	Sample Identification/ Layer Name	Asbestos Detected (Yes/No)	Sample Description
19-4	28248449 Layer 1:	Entry Mastic	Yes	Black, Bituminous
	<b>8% Asbestos</b>			CHRYSOTILE 8%
	<b>92% Non-Asbestos</b>			NON FIBROUS MATERIAL 92%
19-5	28248450 Layer 1:	Entry Baseboard	No	White, Organically Bound
	<b>100% Non-Asbestos</b>			NON FIBROUS MATERIAL 100%
19-6	28248451 Layer 1:	Entry Mastic	No	White, Soft
	<b>100% Non-Asbestos</b>			NON FIBROUS MATERIAL 100%
19-7	28248452 Layer 1:	Master Bedroom Sheetrock	No	White, Powdery
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
	<b>2% Asbestos</b>			CHRYSOTILE 2%
	<b>98% Non-Asbestos</b>			NON FIBROUS MATERIAL 98%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
	<b>&lt; 1% (Trace) Asbestos</b>			CHRYSOTILE < 1%
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
19-8	28248453 Layer 1:	Bedroom Sheetrock	No	White, Powdery
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
	<b>3% Asbestos</b>			CHRYSOTILE 3%
	<b>97% Non-Asbestos</b>			NON FIBROUS MATERIAL 97%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
	<b>&lt; 1% (Trace) Asbestos</b>			CHRYSOTILE < 1%
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
25-1	28248454 Layer 1:	Closet Sheetrock	No	White, Powdery
	<b>100% Non-Asbestos</b>			CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
	<b>3% Asbestos</b>			CHRYSOTILE 3%
	<b>97% Non-Asbestos</b>			NON FIBROUS MATERIAL 97%

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Client Sample No.	SLI Sample/ Layer ID	Sample Identification/ Layer Name	Asbestos Detected (Yes/No)	Sample Description
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos		CHRYSTILE < 1%
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
25-2	28248455	Master Bedroom		
	Layer 1:	Sheetrock	No	White, Powdery
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
		3% Asbestos		CHRYSTILE 3%
		97% Non-Asbestos		NON FIBROUS MATERIAL 97%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos		CHRYSTILE < 1%
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
25-3	28248456	Bedroom		
	Layer 1:	Sheetrock	No	White, Powdery
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
		3% Asbestos		CHRYSTILE 3%
		97% Non-Asbestos		NON FIBROUS MATERIAL 97%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos		CHRYSTILE < 1%
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
25-4	28248457	Bedroom		
	Layer 1:	Texture	Yes	White, Granular
		3% Asbestos		CHRYSTILE 3%
		97% Non-Asbestos		NON FIBROUS MATERIAL 97%
60-1	28248458	Closet		
	Layer 1:	Sheetrock	No	White, Powdery
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2:	Joint Compound	Yes	White, Granular
		2% Asbestos		CHRYSTILE 2%
		98% Non-Asbestos		NON FIBROUS MATERIAL 98%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos		CHRYSTILE < 1%
		100% Non-Asbestos		CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%

Samples analyzed by the EPA Test Method are subject to the inherent limitations of light microscopy including interference by matrix components. Gravimetric reduction and correlative analyses are recommended for all non-friable, organically bound materials. For calibrated visual estimate, 1% is the concentration at which there is a quantitative uncertainty. This report relates only to the items tested, must not be reproduced except in full with the approval of the lab, and must not be used to claim NVLAP or other government agency endorsement.

Client Sample No.	SLI Sample/ Layer ID	Sample Identification/ Layer Name	Asbestos Detected (Yes/No)	Sample Description
60-2	28248459 Layer 1: <b>100% Non-Asbestos</b>	Laundry Floor Tile	<b>No</b>	White, Organically Bound NON FIBROUS MATERIAL 100%
60-3	28248460 Layer 1: <b>100% Non-Asbestos</b>	Closet Sheetrock	<b>No</b>	White, Powdery CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2: <b>2% Asbestos</b> <b>98% Non-Asbestos</b>	Joint Compound	<b>Yes</b>	White, Granular CHRYSOTILE 2% NON FIBROUS MATERIAL 98%
	Layer 3: <b>&lt; 1% (Trace) Asbestos</b> <b>100% Non-Asbestos</b>	Sheetrock/Joint Cmpd	<b>Yes</b>	White, Powdery, Granular CHRYSOTILE < 1% CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
60-4	28248461 Layer 1: <b>100% Non-Asbestos</b>	Bedroom Sheetrock	<b>No</b>	White, Powdery CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2: <b>2% Asbestos</b> <b>98% Non-Asbestos</b>	Joint Compound	<b>Yes</b>	White, Granular CHRYSOTILE 2% NON FIBROUS MATERIAL 98%
	Layer 3: <b>&lt; 1% (Trace) Asbestos</b> <b>100% Non-Asbestos</b>	Sheetrock/Joint Cmpd	<b>Yes</b>	White, Powdery, Granular CHRYSOTILE < 1% CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
77-1	28248462 Layer 1: <b>100% Non-Asbestos</b>	Closet Sheetrock	<b>No</b>	White, Powdery CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
	Layer 2: <b>2% Asbestos</b> <b>98% Non-Asbestos</b>	Joint Compound	<b>Yes</b>	White, Granular CHRYSOTILE 2% NON FIBROUS MATERIAL 98%
	Layer 3: <b>&lt; 1(Trace) Asbestos</b> <b>100% Non-Asbestos</b>	Sheetrock/Joint Cmpd	<b>Yes</b>	White, Powdery, Granular CHRYSOTILE < 1% CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%
77-2	28248463 Layer 1: <b>100% Non-Asbestos</b>	Closet Floor Tile	<b>No</b>	White, Organically Bound NON FIBROUS MATERIAL 100%

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Client Sample No.	SLI Sample/ Layer ID	Sample Identification/ Layer Name	Asbestos Detected (Yes/No)	Sample Description
77-3	28248464	Closet Layer 1: Texture	<b>Yes</b>	White, Granular
		<b>3% Asbestos</b>	CHRYSTILE 3%	
		<b>97% Non-Asbestos</b>	NON FIBROUS MATERIAL 97%	
77-4	28248465	Bedroom Layer 1: Sheetrock	<b>No</b>	White, Powdery
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
		Layer 2: Joint Compound	<b>Yes</b>	White, Granular
		<b>3% Asbestos</b>	CHRYSTILE 3%	
		<b>97% Non-Asbestos</b>	NON FIBROUS MATERIAL 97%	
		Layer 3: Sheetrock/Joint Cmpd	<b>Yes</b>	White, Powdery, Granular
		<b>&lt; 1% (Trace) Asbestos</b>	CHRYSTILE < 1%	
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
77-5	28248466	Master Bedroom Layer 1: Sheetrock	<b>No</b>	White, Powdery
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
		Layer 2: Joint Compound	<b>Yes</b>	White, Granular
		<b>3% Asbestos</b>	CHRYSTILE 3%	
		<b>97% Non-Asbestos</b>	NON FIBROUS MATERIAL 97%	
		Layer 3: Sheetrock/Joint Cmpd	<b>Yes</b>	White, Powdery, Granular
		<b>&lt; 1% (Trace) Asbestos</b>	CHRYSTILE < 1%	
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
84-1	28248467	Closet Layer 1: Sheetrock	<b>No</b>	White, Powdery
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
		Layer 2: Joint Compound	<b>Yes</b>	White, Granular
		<b>3% Asbestos</b>	CHRYSTILE 3%	
		<b>97% Non-Asbestos</b>	NON FIBROUS MATERIAL 97%	
		Layer 3: Sheetrock/Joint Cmpd	<b>Yes</b>	White, Powdery, Granular
		<b>&lt; 1% (Trace) Asbestos</b>	CHRYSTILE < 1%	
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
84-2	28248468	Master Bedroom Layer 1: Sheetrock	<b>No</b>	White, Powdery
		<b>100% Non-Asbestos</b>	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL 95%	
		Layer 2: Joint Compound	<b>Yes</b>	White, Granular
		<b>3% Asbestos</b>	CHRYSTILE 3%	
		<b>97% Non-Asbestos</b>	NON FIBROUS MATERIAL 97%	

Samples analyzed by the EPA Test Method are subject to the inherent limitations of light microscopy including interference by matrix components. Gravimetric reduction and correlative analyses are recommended for all non-friable, organically bound materials. For calibrated visual estimate, 1% is the concentration at which there is a quantitative uncertainty. This report relates only to the items tested, must not be reproduced except in full with the approval of the lab, and must not be used to claim NVLAP or other government agency endorsement.

Client Sample No.	SLI Sample/ Layer ID	Sample Identification/ Layer Name	Asbestos Detected (Yes/No)	Sample Description
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos	CHRYSTILE < 1%	
		100% Non-Asbestos	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL	95%
84-3	28248469	Master Bedroom		
	Layer 1:	<b>Sample not received.</b>		
84-4	28248470	Master Bedroom		
	Layer 1:	Mastic	Yes	Black, Bituminous
		5% Asbestos	CHRYSTILE 5%	
		95% Non-Asbestos	NON FIBROUS MATERIAL	95%
84-5	28248471	Master Bedroom		
	Layer 1:	Baseboard	No	Black, Organically Bound
		100% Non-Asbestos	NON FIBROUS MATERIAL	100%
84-6	28248472	Master Bedroom		
	Layer 1:	Mastic	No	Tan, Brittle
		100% Non-Asbestos	NON FIBROUS MATERIAL	100%
95-1	28248473	Closet		
	Layer 1:	Sheetrock	No	White, Powdery
		100% Non-Asbestos	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL	95%
	Layer 2:	Joint Compound	Yes	White, Granular
		3% Asbestos	CHRYSTILE 3%	
		97% Non-Asbestos	NON FIBROUS MATERIAL	97%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos	CHRYSTILE < 1%	
		100% Non-Asbestos	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL	95%
95-2	28248474	Master Bedroom		
	Layer 1:	Sheetrock	No	White, Powdery
		100% Non-Asbestos	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL	95%
	Layer 2:	Joint Compound	Yes	White, Granular
		3% Asbestos	CHRYSTILE 3%	
		97% Non-Asbestos	NON FIBROUS MATERIAL	97%
	Layer 3:	Sheetrock/Joint Cmpd	Yes	White, Powdery, Granular
		< 1% (Trace) Asbestos	CHRYSTILE < 1%	
		100% Non-Asbestos	CELLULOSE FIBER 5%, NON FIBROUS MATERIAL	95%

Samples analyzed by the EPA Test Method are subject to the inherent limitations of light microscopy including interference by matrix components. Gravimetric reduction and correlative analyses are recommended for all non-friable, organically bound materials. For calibrated visual estimate, 1% is the concentration at which there is a quantitative uncertainty. This report relates only to the items tested, must not be reproduced except in full with the approval of the lab, and must not be used to claim NVLAP or other government agency endorsement.



PROJECT CHAIN OF CUSTODY

2101-01-848

Mail Report To: Advantage Environmental - 2101 35621 Beeching Lane Fremont, CA 94536	Sample Collector: Kris McGlothlin	Phone #: (510) 507-6946
Turnaround Time: hour	Email Results To Kris McGlothlin	Email Address: Kris-mcglathlin@sbcglobal.net
Laboratory Name: Schneider	Jobsite: 1059 Reed Avenue, Sunnyvale	

Sample #:	Location/Description	Sample Type	Sample Date	Type of Analysis
19-1	Closet – sheetrock and tape joint compound	Bulk	11-11-04	PLM
19-2	Closet – texture coat	Bulk	11-11-04	PLM
19-3	Entry – 12X12 floor tile	Bulk	11-11-04	PLM
19-4	Entry – black mastic	Bulk	11-11-04	PLM
19-5	Entry – baseboard	Bulk	11-11-04	PLM
19-6	Entry – baseboard glue	Bulk	11-11-04	PLM
19-7	Master bedroom – sheetrock and tape joint compound	Bulk	11-11-04	PLM
19-8	Bedroom – sheetrock and tape joint compound	Bulk	11-11-04	PLM
		Bulk	11-11-04	PLM
25-1	Closet – sheetrock and tape joint compound	Bulk	11-11-04	PLM
25-2	Master bedroom – sheetrock and tape joint compound	Bulk	11-11-04	PLM
25-3	Bedroom – sheetrock and tape joint compound	Bulk	11-11-04	PLM
25-4	Bedroom – texture coat on sheetrock	Bulk	11-11-04	PLM
		Bulk	11-11-04	PLM
60-1	Closet - sheetrock and tape joint compound	Bulk	11-11-04	PLM
60-2	Laundry – 12X12 floor tile	Bulk	11-11-04	PLM
60-3	Closet - sheetrock and tape joint compound	Bulk	11-11-04	PLM
60-4	Bedroom - sheetrock and tape joint compound	Bulk	11-11-04	PLM
77-1	Closet - sheetrock and tape joint compound	Bulk	11-11-04	PLM
77-2	Closet – 12X12 floor tile	Bulk	11-11-04	PLM
77-3	Closet – texture coat on sheetrock	Bulk	11-11-04	PLM
77-4	Bedroom - sheetrock and tape joint compound	Bulk	11-11-04	PLM
77-5	Master bedroom - sheetrock and tape joint compound	Bulk	11-11-04	PLM
84-1	Closet - sheetrock and tape joint compound	Bulk	11-11-04	PLM
84-2	Master bedroom - sheetrock and tape joint compound	Bulk	11-11-04	PLM
84-3	Master bedroom – 12X12 floor tile	Bulk	11-11-04	PLM
84-4	Master bedroom – black mastic under floor tile	Bulk	11-11-04	PLM
84-5	Master bedroom – baseboard	Bulk	11-11-04	PLM
84-6	Master bedroom – baseboard glue	Bulk	11-11-04	PLM
95-1	Closet - sheetrock and tape joint compound	Bulk	11-11-04	PLM
95-2	Master bedroom - sheetrock and tape joint compound	Bulk	11-11-04	PLM
95-3	Master bedroom – texture coat on sheetrock	Bulk	11-11-04	PLM

FAS 11-15-04

2101-04-848

95-4	Kitchen – sheetrock and tape joint compound	Bulk	11-11-04	PLM
L-1	Laundry room – sheetrock and tape joint compound	Bulk	11-11-04	PLM
L-2	Laundry room – 12X12 floor tile	Bulk	11-11-04	PLM
L-3	Laundry room – black mastic under floor tile	Bulk	11-11-04	PLM
Relinquished by Collector: Kris McGlothlin (16)		Date: 11/11/04	Time: 5:30pm	
Received by Courier		Date:	Time:	
Relinquished by Courier:		Date:	Time:	
Received by Laboratory: <i>[Signature]</i>		Date: 11-15-04	Time: 950	

(K 8466 6358 0462

# SCHNEIDER LABORATORIES

INCORPORATED

2512 W. Cary Street • Richmond, Virginia • 23220-5117  
804-353-6778 • 800-785-LABS (5227) • (FAX) 804-359-1475

*Excellence in Service and Technology*

AIHA/ELLAP 100527, NVLAP 101150-0, NYELAP/NELAC 11413, CAELAP 2078, NC 593

## LABORATORY ANALYSIS REPORT

Lead Analysis by EPA 3050B/7420 Method

ACCOUNT #: 2101-04-845  
CLIENT: Advantage Environmental  
ADDRESS: 35621 Beeching Lane  
Fremont, CA 94536

DATE COLLECTED: 11/11/2004  
DATE RECEIVED: 11/15/2004  
DATE ANALYZED: 11/16/2004  
DATE REPORTED: 11/17/2004

PROJECT NAME: ~~90 Sierra Vista, CA~~  
JOB LOCATION: 1059 Reed Ave  
PROJECT NO.: Sunnyvale, CA  
PO NO.:

SampleType: BULK

SLI Sample No.	Client Sample No.	Sample Description	Sample Wt (mg)	Dilution Factor	Lead (µg)*	Lead Conc (% by wt)
28248159	19-Pb-1	Bedrm W.Sill	650	1	400.0	0.062
28248160	25-Pb-2	Master Bedrm W.Sill	382	1	29.4	0.008
28248161	L-Pb-3	Laundry Rm Wall	986	1	550.3	0.056
248162	60-Pb-4	Bedrm Paint on Wall	818	2	1,121.6	0.137
Analysis Run ID		32142				

Analyst: HANY IBRAHIM



Total Number of Pages in Report: 1

Reviewed By Matthew D. Asbury, Lab Director

Minimum Reporting Limit: 20 µg Total Lead. For work involving HUD, child-occupied building and other residential units, the Federal Lead Standard for paint is 0.5% lead by weight [5000 ppm]. \*For true values, assume two (2) significant figures. All testing is performed in strict accordance with Schneider Laboratories, Inc. protocol.



**Exhibit C**  
**Construction Budget Template**

**Please see attached Construction Budget Template Microsoft Excel file.**

**Project Name**  
**City, State**  
**Project Bid Budget - New Construction**  
**Bid Worksheet**

Contractor:		Bid Date:	
Total Number of Units:	0	Prepared by:	
Total Number of Buildings:	0	Number of Attached Garages:	0
Total Net Rentable SF:	0	Number of Detached Garages:	0
Total Building Gross SF:	0	Number of Garage Buildings:	0
Average Unit Net SF:	0	Number of Carports:	0
Total Clubhouse Net SF:	0	Number of Storage Spaces:	0
		Total Project AVERAGE:	0

Unit Mix							
Unit Type	Quantity	Per Cent	NRSF	Total NRSF	GSF	Total GSF	
A1							
B1							
C1							

CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
<b>Division 1 General Requirements</b>							
1000	10 General Liability Insurance	\$0	\$0	\$0	\$0		
1000	20 Workers Comp Insurance	\$0	\$0	\$0	\$0		
1000	30 Builder's Risk Insurance	\$0	\$0	\$0	\$0		
1000	40 Umbrella Liability Insurance	\$0	\$0	\$0	\$0		
1000	50 Other Insurance	\$0	\$0	\$0	\$0		
1000	60 Payment & Performance Bond	\$0	\$0	\$0	\$0		
1300	10 Project Manager	\$0	\$0	\$0	\$0		
1300	20 General Superintendent	\$0	\$0	\$0	\$0		
1300	30 Field Superintendent	\$0	\$0	\$0	\$0		
1310	10 Blueprints & Copies	\$0	\$0	\$0	\$0		
1350	10 Site Security	\$0	\$0	\$0	\$0		
1510	10 Telephone	\$0	\$0	\$0	\$0		
1510	20 Electricity	\$0	\$0	\$0	\$0		
1510	30 Water	\$0	\$0	\$0	\$0		
1520	10 Temporary Toilets	\$0	\$0	\$0	\$0		
1520	20 Office Trailer	\$0	\$0	\$0	\$0		
1520	30 Field Office Expenses	\$0	\$0	\$0	\$0		
1540	10 Equipment rental	\$0	\$0	\$0	\$0		
1560	10 Safety Equipment	\$0	\$0	\$0	\$0		
1560	20 Small Tools	\$0	\$0	\$0	\$0		
1560	30 Temporary Fencing	\$0	\$0	\$0	\$0		
1740	10 Final Cleaning	\$0	\$0	\$0	\$0		
1740	20 Periodic Cleaning	\$0	\$0	\$0	\$0		
1740	30 Dumpsters	\$0	\$0	\$0	\$0		
1740	40 Broken Glass	\$0	\$0	\$0	\$0		
1780	10 Spare Parts per Contract Documents	\$0	\$0	\$0	\$0		
1780	20 Punchout Labor	\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 1 General Requirements</b>	\$0	\$0	\$0	\$0		

<b>Division 2A Site Construction</b>							
2000	10 Surveying & staking	\$0	\$0	\$0	\$0		
2100	10 Site Environmental Remediation	\$0	\$0	\$0	\$0		
2360	10 Termite Control	\$0	\$0	\$0	\$0		
2370	10 Erosion Control - SWPPP	\$0	\$0	\$0	\$0		
2510	10 Fire & Domestic Water Underground	\$0	\$0	\$0	\$0		
2530	10 Sanitary Sewer Underground	\$0	\$0	\$0	\$0		
2580	10 Electrical,communications & gas underground	\$0	\$0	\$0	\$0		
2580	30 Telephone site distribution underground	\$0	\$0	\$0	\$0		
2600	10 Storm Drains	\$0	\$0	\$0	\$0		
2750	10 Asphalt pavements	\$0	\$0	\$0	\$0		
2760	10 Poursous concrete pavements	\$0	\$0	\$0	\$0		
2770	10 Concrete curb & gutter	\$0	\$0	\$0	\$0		
2775	20 Concrete sidewalks	\$0	\$0	\$0	\$0		



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Total Net Rentable SF:	0	Number of Detached Garages:	0
Total Building Gross SF:	0	Number of Garage Buildings:	0
Average Unit Net SF:	0	Number of Carports:	0
Total Clubhouse Net SF:	0	Number of Storage Spaces:	0
		Total Project Agerage:	0

Unit Mix							
Unit Type	Quantity	Per Cent	NRSF	Total NRSF	GSF	Total GSF	
A1							
B1							
C1							

CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
4800	10 Entry monument	\$0	\$0	\$0	\$0		
4900	10 Masnory restoration & cleaning	\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 4 Masonry</b>	\$0	\$0	\$0	\$0		

Division 5 Metals							
5100	10 Structural steel	\$0	\$0	\$0	\$0		
5500	10 Structural metal fabrications	\$0	\$0	\$0	\$0		
5520	10 Metal stairs, treads & rails	\$0	\$0	\$0	\$0		
5700	10 Patio/balcony rails	\$0	\$0	\$0	\$0		
5700	20 Perimeter steel fence	\$0	\$0	\$0	\$0		
5700	30 Pool steel fence	\$0	\$0	\$0	\$0		
5800	10 Expansion control	\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 5 Metals</b>	\$0	\$0	\$0	\$0		

Division 6 Woods & Plastics							
6100	10 Rough carpentry - labor	\$0	\$0	\$0	\$0		
6100	20 Rough Carpentry - lumber	\$0	\$0	\$0	\$0		
6100	30 Roof trusses	\$0	\$0	\$0	\$0		
6100	40 Floor trusses	\$0	\$0	\$0	\$0		
6100	50 Trellis work - garbage enclosure/landscape	\$0	\$0	\$0	\$0		
6200	10 Finish carpentry - labor	\$0	\$0	\$0	\$0		
6200	20 Finish carpentry - materials	\$0	\$0	\$0	\$0		
6270	10 Closet shelving-wood	\$0	\$0	\$0	\$0		
6270	20	\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 6 Woods &amp; Plastics</b>	\$0	\$0	\$0	\$0		

Division 7 Thermal & Moisture							
7100	10 Waterproofing podium concrete deck	\$0	\$0	\$0	\$0		
7130	10 Slipsheet membrane waterproofing	\$0	\$0	\$0	\$0		
7140	10 Direct bond fluid membrane decking	\$0	\$0	\$0	\$0		
7170	10 Betonite sheet membrane	\$0	\$0	\$0	\$0		
7200	10 Building Insulation	\$0	\$0	\$0	\$0		
7310	10 Roof shingles - fiberglass	\$0	\$0	\$0	\$0		
7320	10 Roof tiles - cement	\$0	\$0	\$0	\$0		
7450	10 Cementitious siding - L & M	\$0	\$0	\$0	\$0		
7460	10 Plywood siding - L & M	\$0	\$0	\$0	\$0		
7510	10 Built-up roofing	\$0	\$0	\$0	\$0		
7550	10 Modified Bitiminous membrane roofing	\$0	\$0	\$0	\$0		
7590	10 Roof maintenance & repair	\$0	\$0	\$0	\$0		
7620	10 Sheetmetal flashing & trim	\$0	\$0	\$0	\$0		
7710	10 Gutters & downspouts	\$0	\$0	\$0	\$0		

**Project Name**  
**City, State**  
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**Bid Worksheet**

Contractor:		Bid Date:	
Total Number of Units:	0	Prepared by:	
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Total Net Rentable SF:	0	Number of Detached Garages:	0
Total Building Gross SF:	0	Number of Garage Buildings:	0
Average Unit Net SF:	0	Number of Carports:	0
Total Clubhouse Net SF:	0	Number of Storage Spaces:	0
		Total Project Agerage:	0

Unit Mix							
Unit Type	Quantity	Per Cent	NRSF	Total NRSF	GSF	Total GSF	
A1							
B1							
C1							

CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
7840	10 Firestopping	\$0	\$0	\$0	\$0		
7900	10 Sealants & caulking	\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 7 Thermal &amp; Moisture</b>	\$0	\$0	\$0	\$0		

Division 8 Doors & Windows							
8100	10	Steel faced insulated doors (entry)	\$0	\$0	\$0	\$0	
8100	15	Fiberglass insulated doors (entry)	\$0	\$0	\$0	\$0	
8100	20	Standard steel doors (utility)	\$0	\$0	\$0	\$0	
8250	10	Interior prehung doors	\$0	\$0	\$0	\$0	
8260	10	Closet sliding doors	\$0	\$0	\$0	\$0	
8310	10	Access doors	\$0	\$0	\$0	\$0	
8360	10	Sectional overhead doors	\$0	\$0	\$0	\$0	
8400	10	Metal framed storefront doors	\$0	\$0	\$0	\$0	
8520	10	Metal framed windows & screens	\$0	\$0	\$0	\$0	
8560	10	Vinyl windows - nail on fin & screens	\$0	\$0	\$0	\$0	
8700	10	Finish hardware	\$0	\$0	\$0	\$0	
8710	10	Garage door opener equipment	\$0	\$0	\$0	\$0	
8720	10	Weatherstripping & seals	\$0	\$0	\$0	\$0	
8740	10	Electro-Mechanical hardware (door hold opens etc)	\$0	\$0	\$0	\$0	
8770	10	Key boxes (leasing/maintenance offices)	\$0	\$0	\$0	\$0	
		<b>Subtotal Div. 8 Doors &amp; Windows</b>	\$0	\$0	\$0	\$0	

Division 9 Finishes							
9110	10	Ceiling suspension - hat channel etc	\$0	\$0	\$0	\$0	
9200	10	Stucco - 3 coat system L & M	\$0	\$0	\$0	\$0	
9200	20	Stucco - 1 coat system - L & M	\$0	\$0	\$0	\$0	
9250	10	Drywall including tape and finish new drywall	\$0	\$0	\$0	\$0	
9300	10	Ceramic tile	\$0	\$0	\$0	\$0	
9580	10	Suspended T Bar ceilings	\$0	\$0	\$0	\$0	
9650	10	Resilient flooring	\$0	\$0	\$0	\$0	
9680	10	Carpet - apartments	\$0	\$0	\$0	\$0	
9680	20	Carpet - special access	\$0	\$0	\$0	\$0	
9700	10	Tub walls	\$0	\$0	\$0	\$0	
9900	10	Exterior paint - L & M	\$0	\$0	\$0	\$0	
9900	20	Interior paint - L & M	\$0	\$0	\$0	\$0	
		<b>Subtotal Div. 9 Finishes</b>	\$0	\$0	\$0	\$0	

Division 10 Specialties							
10150	10	Toilet partitions (common restrooms)	\$0	\$0	\$0	\$0	
10300	10	Manufactured fireplaces	\$0	\$0	\$0	\$0	
10350	10	Flagpoles	\$0	\$0	\$0	\$0	

**Project Name**  
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Contractor:		Bid Date:	
Total Number of Units:	0	Prepared by:	
Total Number of Buildings:	0	Number of Attached Garages:	0
Total Net Rentable SF:	0	Number of Detached Garages:	0
Total Building Gross SF:	0	Number of Garage Buildings:	0
Average Unit Net SF:	0	Number of Carports:	0
Total Clubhouse Net SF:	0	Number of Storage Spaces:	0
		Total Project AVERAGE:	0

Unit Mix							
Unit Type	Quantity	Per Cent	NRSF	Total NRSF	GSF	Total GSF	
A1							
B1							
C1							

CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
10400	10 Project signage	\$0	\$0	\$0	\$0		
10430	10 Property monument sign	\$0	\$0	\$0	\$0		
10520	10 Fire extinguishers/cabinets	\$0	\$0	\$0	\$0		
10530	10 Awnings - Canvas	\$0	\$0	\$0	\$0		
10530	20 Awnings - Metal	\$0	\$0	\$0	\$0		
10550	10 Postal specialties	\$0	\$0	\$0	\$0		
10670	10 Wire shelving	\$0	\$0	\$0	\$0		
10800	10 Toilet & bath accessories	\$0	\$0	\$0	\$0		
10830	10 Built-in ironing boards	\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 10 Specialties</b>	\$0	\$0	\$0	\$0		

Division 11 Equipment							
CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
11010	10 Maintenance equipment	\$0	\$0	\$0	\$0		
11020	10 Safe (Leasing office)	\$0	\$0	\$0	\$0		
11110	10 Commercial laundry equipment	\$0	\$0	\$0	\$0		
11130	10 Audio-Visual (clubhouse)	\$0	\$0	\$0	\$0		
11170	10 Waste Compactor	\$0	\$0	\$0	\$0		
11170	20 Recycle equipment	\$0	\$0	\$0	\$0		
11400	10 Food service equipment	\$0	\$0	\$0	\$0		
11440	10 Food equipment - garbage disposer	\$0	\$0	\$0	\$0		
11450	10 Appliances - Energy Star	\$0	\$0	\$0	\$0		
11450	20 Washers & dryers	\$0	\$0	\$0	\$0		
11280	10 Automatic gate openers/motors/controls	\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 11 Equipment</b>	\$0	\$0	\$0	\$0		

Division 12 Furnishings							
CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
12300	10 Kitchen & bath modular cabinets	\$0	\$0	\$0	\$0		
12320	10 Plastic laminate counters	\$0	\$0	\$0	\$0		
12400	10 Furniture - leasing office	\$0	\$0	\$0	\$0		
12410	10 File cabinets - office	\$0	\$0	\$0	\$0		
12490	10 Window coverings - leasing office	\$0	\$0	\$0	\$0		
12490	20 Window coverings - apartments	\$0	\$0	\$0	\$0		
12500	10 Office equipment	\$0	\$0	\$0	\$0		
		\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 12 Furnishings</b>	\$0	\$0	\$0	\$0		

Division 13 Special Construction							
CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
13100	10 Clubhouse building	\$0	\$0	\$0	\$0		
13100	30 Garage buildings	\$0	\$0	\$0	\$0		
13100	40 Maintenance building	\$0	\$0	\$0	\$0		
13120	10 Carports	\$0	\$0	\$0	\$0		
13120	30 Picnic pavilion	\$0	\$0	\$0	\$0		

**Project Name**  
**City, State**  
**Project Bid Budget - New Construction**  
**Bid Worksheet**

Contractor:		Bid Date:	
Total Number of Units:	0	Prepared by:	
Total Number of Buildings:	0	Number of Attached Garages:	0
Total Net Rentable SF:	0	Number of Detached Garages:	0
Total Building Gross SF:	0	Number of Garage Buildings:	0
Average Unit Net SF:	0	Number of Carports:	0
Total Clubhouse Net SF:	0	Number of Storage Spaces:	0
		Total Project AVERAGE:	0

Unit Mix							
Unit Type	Quantity	Per Cent	NRSF	Total NRSF	GSF	Total GSF	
A1							
B1							
C1							

CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
13150	10 Swimming pool	\$0	\$0	\$0	\$0		
13150	20 Swimming pool equipment	\$0	\$0	\$0	\$0		
13160	10 Water feature/fountain	\$0	\$0	\$0	\$0		
13280	10 Asbestos Remediation	\$0	\$0	\$0	\$0		
13700	10 Security alarm system - leasing office/models	\$0	\$0	\$0	\$0		
13800	10 Automatic gate openers/motors/controls	\$0	\$0	\$0	\$0		
13850	10 Fire alarm system	\$0	\$0	\$0	\$0		
13910	10 Fire sprinkler system - above ground	\$0	\$0	\$0	\$0		
13800	10 Automatic gate openers/motors/controls	\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 13 Special Construction</b>	\$0	\$0	\$0	\$0		

Division 14 Conveying Systems - Elevators							
14200	10 Hydraulic Elevators	\$0	\$0	\$0	\$0		
14400	10 Handicap lifts	\$0	\$0	\$0	\$0		
	<b>Subtotal Div. 14 Conveying Systems</b>	\$0	\$0	\$0	\$0		

Division 15 Mechanical & Plumbing							
15100	10 Building natural gas piping	\$0	\$0	\$0	\$0		
15100	20 Plumbing water supply - apartments	\$0	\$0	\$0	\$0		
15100	30 Plumbing sanitary waste system	\$0	\$0	\$0	\$0		
15410	10 Plumbing fixtures	\$0	\$0	\$0	\$0		
15480	10 Domestic water heaters	\$0	\$0	\$0	\$0		
15730	10 Package air conditioning equipment	\$0	\$0	\$0	\$0		
15750	10 Humidity control equipment/humidistat	\$0	\$0	\$0	\$0		
15760	10 Central heating & cooling units	\$0	\$0	\$0	\$0		
15760	20 Baseboard electric heating	\$0	\$0	\$0	\$0		
15830	10 Bathroom exhaust fans	\$0	\$0	\$0	\$0		
15950	10 Testing, adjusting & balancing	\$0	\$0	\$0	\$0		
	<b>Subtotal Div. Mechanical &amp; Plumbing</b>	\$0	\$0	\$0	\$0		

Division 16 Electrical & Communications							
16100	10 Electrical - L & M	\$0	\$0	\$0	\$0		
16200	10 Electrical equipment - motors, generators etc.	\$0	\$0	\$0	\$0		
16400	10 Water submeter electronics	\$0	\$0	\$0	\$0		
16500	20 Apartment light fixtures	\$0	\$0	\$0	\$0		
16520	10 Electrical - site luminaries/poles/grounds	\$0	\$0	\$0	\$0		
16530	10 Emergency lighting	\$0	\$0	\$0	\$0		
16700	10 Telephone system	\$0	\$0	\$0	\$0		
16740	10 High speed data system	\$0	\$0	\$0	\$0		
16800	10 Television system	\$0	\$0	\$0	\$0		
	<b>Subtotal Electrical &amp; Communications</b>	\$0	\$0	\$0	\$0		

**Project Name**  
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Average Unit Net SF:	0	Number of Carports:	0
Total Clubhouse Net SF:	0	Number of Storage Spaces:	0
		Total Project AVERAGE:	0

Unit Mix							
Unit Type	Quantity	Per Cent	NRSF	Total NRSF	GSF	Total GSF	
A1							
B1							
C1							

CSI Division	Description	Line item cost	Cost/Unit	Cost/ NRSF	Cost/GSF		
<b>Summary</b>							
	Subtotal General Requirements - Div. 1	\$0	\$0	\$0	\$0		
	Subtotal Site Work - Div. 2A	\$0	\$0	\$0	\$0		
	Subtotal Off-site Work Div. 2B	\$0	\$0	\$0	\$0		
	Subtotal Hard Costs Divs. 3 - 16	\$0	\$0	\$0	\$0		
	Contract Contingency	\$0	\$0	\$0	\$0		
	General Contractor Fee	\$0	\$0	\$0	\$0		
	<b>Total Contract Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>		

Contractor represents that it has, in its role of construction contractor and not as a design professional, (i) familiarized itself with applicable building, plumbing, mechanical, electrical, fire and other codes, rules, regulations, ordinances and laws bearing upon the Work consistent with the standard of care and industry standards applicable to the Contractor, (ii) carefully studied the Bid Documents with each other and with information furnished by the Owner and Owner Consultants and (iii) carefully inspected the property for as-built conditions (iv) advised the Owner in writing of any errors and inconsistencies in the Drawings and Specifications and variations from site conditions that it discovered and any changes to the Drawings and Specifications which, in Contractor's experience, will be required to complete the Work. The Contractor represents that, except as the Contractor may advise the Owner in a written notice with its bid submittal, the information available to the Contractor is sufficient in content and detail to complete the Work and to enable the Contractor to deliver, within the Bid Sum and the proposed construction time schedule, a fully completed Project with all appurtenant improvements without the need for any change the Contract Sum specified in the Bid.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

**Exhibit D  
Experience Forms**

**Please see attached Experience Form Templates.**

# EXHIBIT D- Experience Form Templates

## Part 1: Experience and Organizational Capacity

### Completed Projects

Please provide the following information for **similar projects completed** in the last 5 years. **Please limit response to 5 completed projects.** Please list in the order completed, beginning with the most recent. You may use the form provided here or create your own format as long as the required information below is included.

1. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

\_\_\_\_\_  
\_\_\_\_\_

2. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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3. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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4. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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5. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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**EXHIBIT B- Experience Form Templates**

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**Part 2: Experience and Organizational Capacity**

**Current Projects**

Please provide the following information for **similar projects** presently under contract. **Please limit response to 5 completed projects.** You may use the form provided here or create your own format as long as the required information below is included.

1. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Estimated % of Current Workload \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

\_\_\_\_\_  
\_\_\_\_\_

2. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Estimated % of Current Workload \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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3. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Estimated % of Current Workload \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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4. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Estimated % of Current Workload \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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5. Project Name \_\_\_\_\_ Location \_\_\_\_\_

# of Units \_\_\_\_\_ # of Stories, Building Type \_\_\_\_\_

New Construction \_\_\_\_\_ Rehab \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

Lead and Support Staff \_\_\_\_\_

Estimated % of Current Workload \_\_\_\_\_

Property Owner \_\_\_\_\_

Property Owner Contact Name and Phone Number \_\_\_\_\_

General Contractor \_\_\_\_\_

General Contractor Contact Name and Phone Number \_\_\_\_\_

Project Description: Please include a brief description of your firm's involvement, special project features, any reasons for delay & other relevant information.

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**Exhibit E**  
**Submission Declaration**

**Please see attached Submission Declaration Template.**

**Exhibit E**  
**Submission Declaration**

**1) Scope of Proposal:** The undersigned, doing business under the firm name of:

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Having carefully examined the Invitation For Bids, Instructions to Bidders, and all other documents included in the posted Invitation For Bids, our Base Proposal to complete the entire work and provide the Owner with a finished and complete project that meets the intent of the Invitation For Bids is the following amount:

**BASE PROPOSAL:** \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).

Note: Proposals shall include all costs for labor, materials, equipment, subcontractors, supervision, insurance, bonds (if required), permits, freight and other incidentals called for by the Proposal Documents plus contractor overhead and profit. The Base Proposal set forth above shall be the sum total payable under this Contract.

**2) Breakdown of Proposal:** Complete and attach the Construction Budget Template in accordance with instructions provided in the Invitation For Bids. The Construction Budget Template is included here solely to assist MPHIC in segregating costs of selected portions of the work for budgeting and allocation purposes only. These are not alternate prices and leaving a line item blank does not exclude that item from the scope of work prescribed by the plans, specifications and contract documents.

**3) Clarifications :**

**4) Contract:** If written notice of the acceptance of this bid is mailed, faxed or delivered to the undersigned within sixty (60) days after the date of opening of the proposals, or any time thereafter before this proposal is withdrawn, the undersigned will, within ten (10) days after the date of such mailing, telegraphing or delivering of such notice, execute and deliver a Contract in the Form of Agreement present in the Invitation For Bids Exhibit F, and if requested, give Performance and Contractor's Bonds in accordance with the specification and proposal as accepted.

The undersigned hereby designates as his office to which such notice of acceptance may be mailed, faxed or delivered:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Telephone:.

**5) Time of Completion:** If awarded the contract, we agree that the time of completion for the project is: \_\_\_\_\_ Calendar Days.

**6) Bond:** The undersigned agrees, if required, to execute within ten days, two corporate surety bonds.

**7) Insurance:** Our Public Liability and Property Damage Insurance placed with \_\_\_\_\_

Our Workmen's compensation insurance is placed with \_\_\_\_\_

Our Workmen's compensation insurance experience modification rating (mod rate) is \_\_\_\_\_

Our Fire, Extended Coverage, Vandalism/Malicious Mischief Insurance is placed with \_\_\_\_\_

**8) Addenda:** Circular letter, bulletins, addenda, etc., bound with specifications or issued during the time of bidding, are to be included in the proposal, and in completing the contract they are to become part thereof.

**9) Addenda Receipt:** The receipt of the following addenda to the specifications is acknowledged:

Addendum No. 1 \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

Addendum No. 4 \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. 5 \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. 6 \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. 7 \_\_\_\_\_ Date \_\_\_\_\_

**10) Contractors License:** The undersigned agrees, if awarded the Contract to maintain and keep current a valid Contractor's License through the completion of the Contract.

11) This proposal may be withdrawn by the Proposer at any time prior to the scheduled time for the opening or any authorized postponement thereof. Mid Peninsula Housing Coalition reserves the right to reject any and all proposals without cause.

12) By its signature on this form, the proposer certifies under penalty of perjury the accuracy of the representations made in this proposal and all attachments.

Dated \_\_\_\_\_ 2010

Signed \_\_\_\_\_

Company

Title

**Exhibit F**  
**Lump Sum Short Form Contract**

**Please see attached Lump Sum Short Form Contract Template.**

**AGREEMENT BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION PROJECT OF LIMITED SCOPE -  
STIPULATED SUM PAYMENT**

**Project Name: Aster Park**

Property Address:

**Description of Work: Rehabilitation**

**Contract Amount:** \_\_\_\_\_

**Start Date:** \_\_\_\_\_

**Completion Date:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Associates, A California Limited Partnership**

c/o Mid-Peninsula Housing Coalition  
Construction & Facilities Department  
303 Vintage Drive, Suite 250  
Foster City, CA 94404  
Phone: (650) 356-2900  
Fax: (650) 357-9763

**Contractor:** \_\_\_\_\_

Address:

City:

Phone:

Fax:

**Contractor's State License No.:** \_\_\_\_\_

**Insurance Coverage Expiration Date:** \_\_\_\_\_

**Date:**

**Contract Number:** \_\_\_\_\_

**AGREEMENT BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION PROJECT OF LIMITED SCOPE -  
STIPULATED SUM PAYMENT**

Contract Number: \_\_\_\_\_

Owner and Contractor, both named below, agree as follows:

**1. Key Terms**

- A. Date of Agreement: \_\_\_\_\_
- B. Owner: \_\_\_\_\_ 303 Vintage Park Drive, Suite 250  
Foster City, CA 94404
- C. Contractor Name, \_\_\_\_\_  
Address & Phone No.: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- D. Name of Project: Aster Park Apartments  
Property description attached as Exhibit A
- E. Location of Project: \_\_\_\_\_
- F. Description of Work: See Exhibit D
- G. Commencement Date: As set forth in Work Schedule (Exhibit E).
- H. Final Completion Date: \_\_\_\_\_
- I. Contract Sum: \_\_\_\_\_
- J. Drawings: Described in or attached as part of Exhibit B
- K. Specifications: Described in or attached as part of Exhibit B
- L. Additional Insureds: \_\_\_\_\_ Owner  
Mid-Peninsula Housing Coalition  
Mid-Peninsula Housing Management Corporation  
  
Falcone Development Services, LLC
- M. Owner's Representative N/A

## 2. The Work

Contractor will furnish all work, labor, tools, equipment, materials, supervision, scheduling, coordination, and contract administration necessary to construct and complete in a good, expeditious, workmanlike, and substantial manner the work as described in the Scope of Work (Exhibit D), and in accordance with the Drawings and Specifications (Exhibit B) and other Contract Documents (the "Work"). The Work may constitute or relate to the whole or a part of the Project. Any Work that does not conform to the Contract Documents or that is not otherwise reasonably acceptable to the owner may be rejected by Owner.

## 3. Commencement and Completion

Contractor shall begin work on the Commencement Date, and shall achieve Final Completion on the Final Completion Date, as specified in Section H. of Paragraph 1. The Work shall progress in accordance with the detailed work schedule set forth on Exhibit E (the "Work Schedule"). It is a material inducement for Owner to enter into this Agreement that Contractor shall have achieved Final Completion by the Final Completion Date. "Final Completion" shall mean when (i) the Work is satisfactorily completed, including all punch list items, (ii) all agencies with jurisdiction have approved the Work or portion thereof, including the issuance of final certificates of occupancy, (iii) clean-up has been completed as required under Paragraph 18 (Cleanup), and (iv) Contractor has delivered to Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed.

## 4. Time

The Commencement Date, Final Completion Date, Work Schedule (Exhibit E), and all other time limits stated in the Contract Documents, are of the essence of the Contract. By executing the Contract Contractor confirms that the Final Completion Date and the Work Schedule are reasonable time frames for performing the Work. Failure to comply with any such date, time or limit is a material breach of this Contract. Unless otherwise expressly stated, any reference in this Contract to "days" means "calendar days."

## 5. Delay Beyond Contractor's Control

If Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or by other causes which Owner determines may justify delay, then, provided Contractor first gives written notice of such cause to Owner within five days after the event, Contractor is excused for such delay ("Excused Delay"). In such case, the Commencement Date, Work Schedule, and/or Final Completion Date, as the case may be, shall be extended by a Change Order for such reasonable time as Owner may determine, subject to the provisions regarding Claims and Disputes (Paragraph 33).

Except as provided below, Contractor's sole remedy in the event of such delay shall be the extension of the Commencement Date, Work Schedule, and/or Final Completion Date, as provided in the preceding paragraph. Without limiting the generality of the foregoing sentence, Contractor shall not be entitled to compensation for any loss of productivity, impact damages or other consequential damages.

## 6. Liquidated Damages for Contractor's Unexcused Delay-N/A

## 7. Contract Sum and Payments

Owner shall pay Contractor the Contract Sum, as set forth in Paragraph 1, in current funds for Contractor's performance of this Contract. The Contract Sum will be paid in installments as set forth in the Schedule of Values (Exhibit F).

A. *Retention.* A 10% retention will be withheld from each progress payment. The retention will be paid upon Final Completion.

B. *Savings on Allowances.* In the event the Schedule of Values or any other Contract Document includes a cost allowance for any component of the Work, then: (i) if the cost of any such item is less than the applicable allowance, the savings shall accrue 100% to Owner and (ii) if the cost of any such item exceeds the applicable allowance, the excess shall be borne 100% by Owner, but only if such excess cost is set forth in a Change Order issued by Owner (Paragraph 26).

C. *Progress Payment Requests.* Progress payments will be made, not more often than once per calendar month, based upon Work completed in accordance with the Contract Document and otherwise to the reasonable satisfaction of the Owner, based on written requests ("Progress Payment Requests"), subject to Owner's right to withhold payment for rejected Work. Properly completed Progress Payment Requests will be paid approximately 30 days from the date of Owner's receipt of such Progress Payment Request or as otherwise described in Exhibit F, Schedule of Values. Each Progress Payment Request must be accompanied by supporting data in such form and substance as Owner may require to confirm that the claimed portion of the Work has been properly performed, including but not limited to the following:

- (1) Vendor name, address, Tax ID # and invoice #.
- (2) Project Name
- (3) Clear description of the component of the Work to which the invoice applies.
- (4) Conditional Lien Waivers from all Subcontractors and sub-subcontractors, and all suppliers who supply more than \$1,000 worth of materials and/or labor to the Project, for the current invoice period, in accordance with the Required Lien Waiver and Release Forms (Exhibit G).
- (5) Unconditional Lien Waivers relating to the previous Progress Payment Request from all Subcontractors and sub-subcontractors, and all suppliers who supplied more than \$1,000 cumulatively in materials and/or labor to the Project, in accordance with Required Lien Waiver and Release Forms (Exhibit G).

A Progress Payment Request that does not include all required documentation will be considered incomplete, and will not be considered received and will not be processed until all required documents are received by the Mid-Peninsula Housing Coalition Construction Department. Any properly completed Progress Payment Request that has not been paid within 60 days after Owner's receipt thereof shall bear interest thereafter at the rate of one-half of one percent per month (6% per annum).

D. *Contractor's Warranty of Title to Work.* Contractor warrants that title to all Work covered by a Progress Payment Request will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of a Progress Payment Request, all Work for which payments have previously been made by Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to Owner's interests.

E. *Payment for Approved Change Orders.* Approved Change Orders shall be billed as a separate line item. A copy of the approved Change Order with appropriate backup must be attached to the Progress Payment Request.

F. *Payments by Contractor.* Contractor shall pay each Subcontractor in a prompt and timely manner upon receipt of payment from Owner, out of the amount paid to Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. Contractor shall, by appropriate agreement with each Subcontractor, require each

Subcontractor to make payments to sub-subcontractors in similar manner. Owner has no obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law. However, Owner reserves the right to issue payment by joint check directly to Contractor and to any Subcontractor or material supplier who claims to remain unpaid for labor or materials provided for and incorporated into the Work. Additionally, Contractor will certify it has met prevailing wage standard as expressed in the applicable wage decision is CA30, Modification 0, issued 03/12/2010 and is in compliance with all provisions of HUD Form 2554 Supplementary Conditions of the Contract for Construction (attached as Exhibit J)

G. *Final Payment.* Owner shall make final payment, constituting the entire unpaid balance of the Contract Sum including the retention, upon Final Completion. The making of final payment shall constitute a waiver of claims by Owner except those arising from: (1) liens, claims, security interests or encumbrances arising out of the Work and unsettled; (2) failure of the Work to comply with the requirements of this Contract; or (3) terms of special warranties required by this Contract. Acceptance of final payment by Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Progress Payment Request. Contractor's final payment request shall include a Conditional Final Lien Release on the Owner's form. Within 10 days after receipt of final payment Contractor shall issue an Unconditional Final Lien Release on the Owner's form.

H. *Payment Not Acceptance.* A progress payment, final payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not completed in accordance with this Contract.

I. *Withholding of Payments.* Owner may withhold payments on account of (i) defective Work not remedied, (ii) claims filed by third parties, (iii) failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment, (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (v) damage to Owner or another contractor, (vi) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, (vii) Contractor's failure to carry out the Work in accordance with the Contract Documents or (viii) Contractor's failure to meet the Owner's standard of work quality, in the reasonable judgment of the Owner.

J. *Accounting Records.* All records shall be maintained in accordance with Generally Accepted Accounting Procedures (GAAP), consistently applied. Subcontractors retained by Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of Contractor under this Section 7.J.. If any inspection by Owner of Contractor's records, books, correspondence, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment as described in Section 7.I, Contractor shall pay Owner upon demand an amount equal to the overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Section 7.J. shall not be applied to any portion of an overcharge that is the subject of a good-faith dispute between the parties.

## 8. The Contract

The Contract Documents form the Contract for Construction. The Contract Documents comprise (i) this Agreement Between Owner and Contractor for Construction Project of Limited Scope – Stipulated Sum Payment (the "Contract"), (ii) the Drawings and Specifications described in or attached as a part of Exhibit B (the "Drawings and Specifications"), (iii) all other Addenda and Exhibits incorporated into this Contract, and (iv) Modifications issued after execution of the Contract. A "Modification" is (a) a written amendment to the Contract signed by both parties, (b) a Change Order, or (c) a written order for a minor change in the Work issued by Owner. The Contract may be amended or modified only by a Modification. The term Contract Documents does not include shop drawings, product data, samples or

similar submittals. The intent of the Contract Documents is to include all terms and specifications necessary for the proper execution and completion of the Work by Contractor. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. No other agreements, oral or written, pertaining to the Work exist between the parties. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and a Subcontractor or sub-subcontractor, or between any persons or entities other than Owner and Contractor.

#### **9. Interpretation of Contract, Drawings and Specifications**

The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In case of a conflict in the Contract Documents the Contractor shall conform to whichever document requires the highest quality of work, product or process. If the Contract Documents fail to specify the quality of particular materials, finishes, equipment, etc., Contractor shall promptly notify Owner and Cooperate in good faith with Owner to agree upon a level of quality reasonably acceptable to the Owner.

#### **10. Ownership and Use of Drawings and Specifications**

Neither Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings or specifications. All copies of them, except Contractor's record set, shall be returned or suitably accounted for to Owner, on request, upon completion of the Work. The drawings and specifications are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work, without the specific written consent of Owner. Contractor, Subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the drawings and specifications appropriate to and for use in the execution of their Work.

#### **11. Contractor's Review of Applicable Laws, Field Conditions and Contract Documents**

Contractor represents that it (i) has independently visited the site and investigated the site and all conditions that might affect the progress of the Work, (ii) has correlated personal observations with requirements of the Contract Documents, and (iii) is satisfied with those conditions and such correlation. Without limiting the generality of the foregoing, Contractor specifically represents that it has, in its role as installing contractor and not as a design professional, (a) familiarized itself with applicable building and related codes, rules, regulations, ordinances and laws bearing upon the Work consistent with the standard of care and industry standards applicable to Contractor, (b) carefully studied the Drawings, Specifications and other Contract Documents and compared them with each other and with information furnished by Owner and Owner's Representative, and (c) advised Owner in writing of any errors and inconsistencies in the Drawings and Specifications that it discovered and any changes to the Drawings and Specifications that, in Contractor's experience, will be required to complete the Work. Contractor represents that, except as Contractor may have advised Owner in a written notice prior to the execution of the Contract, the information obtained by Contractor as of the date hereof is sufficient in content and detail to complete the Work and to enable Contractor to deliver the Work with all appurtenant improvements, for the Contract Sum and in accordance with the Work Schedule.

#### **12. Insurance Matters**

A. *Insurance.* Owner and Contractor shall obtain insurance coverages as specified in Exhibit I.

B. *Waiver of Subrogation.* All insurance required under this Contract shall contain a waiver of subrogation as to Owner, its directors, officers and employees. Owner and Contractor waive all rights against each other and any of their Subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the

extent covered by property insurance obtained by Owner or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

### **13. Applicable Law, Permits, Fees and Notices**

Except to the extent otherwise provided in the Scope of Work (Exhibit D), Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. Contractor shall promptly notify Owner if the Drawings and Specifications are observed by Contractor to be at variance therewith. If Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Owner, Contractor shall assume appropriate responsibility for such work and shall bear the costs attributable to correction.

### **14. Labor and Materials**

Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work, with the understanding that Contractor will be accessing electricity via the existing electric facilities at the property. Contractor shall keep the Project free of mechanics' liens recorded by or under its Subcontractors, sub-subcontractors and suppliers. If Contractor fails to make any payments required under this Paragraph, or if Contractor fails to keep the Project free of mechanics' liens incurred under Contractor or under its Subcontractors or sub-subcontractors, Owner may settle such claim or procure statutory lien release bonds, and Contractor shall on demand reimburse Owner for such claims and such bonds so paid plus reasonable attorneys' fees and any sums expended by Owner in the discharge of liens.

### **15. Subcontractors**

A Subcontractor is a person or entity that has a direct contract with Contractor to perform a portion of the Work at the site.

A. As soon as practicable after execution of the Contract, Contractor shall furnish in writing to Owner the names of Subcontractors for each of the principal portions of the Work. Contractor shall not contract with any Subcontractor to whom Owner has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Work Schedule (Exhibit E) shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's work. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

B. Contracts between Contractor and the Subcontractors shall (1) require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's work, which Contractor by the Contract Documents assumes toward Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to Contractor by the Contract Documents.

**16. Supervision and Construction Procedures**

Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall designate a qualified on-site supervisor, who may be named in the Scope of Work (Exhibit D); Contractor may not remove or replace the designated on-site supervisor without Owner's written consent, which Owner may not unreasonably withhold. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall be fully and solely responsible for the jobsite safety thereof unless Contractor gives timely written notice to Owner that such means, methods, techniques, sequences or procedures may not be safe.

**17. Protection of Persons and Property**

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein; and (iii) other property at the site or adjacent thereto. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under this Paragraph, except for damage or loss attributable to acts or omissions of Owner or by anyone for whose acts Owner may be liable, and not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's indemnification obligations under Paragraph 20 (Indemnification by Contractor).

**18. Cleanup**

Contractor shall keep the site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Each day, Contractor shall remove from and about the Project waste materials and rubbish, and leave the Project in a neat and broom-clean condition. At completion of the Work, Contractor shall (i) remove from and about the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus material, and (ii) thoroughly clean the Project, leaving it in a neat and broom-clean condition. If Contractor fails to clean up, Owner may do so at Contractor's expense.

**19. Contractor's Miscellaneous Obligations**

A. Contractor shall be responsible to Owner for acts, errors and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.

B. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons not skilled in tasks assigned to them. The Work will be performed in and about an occupied apartment complex. The behavior of persons performing the Work could have an adverse impact on the residents, Owner's ability to rent apartments and provide resident services, and the business reputation and desirability of the apartment complex. If Owner or its property manager receives a complaint from any resident or visitor regarding the behavior of any employee or agent of Contractor or any Subcontractor, Contractor will immediately remove such person or cause such person to be removed from the job site and replace such person, or cause such person to be replaced.

C. If any employee of Contractor or any Subcontractor working on the Project is determined to be an unauthorized alien, Contractor will immediately remove, or cause to be removed, such individual from such work and replace, or cause to be replaced, such individual with another who is not an unauthorized alien.

D. Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

E. Contractor may make substitutions only with the consent of Owner, in accordance with a Change Order.

F. Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded.

G. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

H. Contractor shall be responsible for cutting, fitting or patching required in order to complete the Work or to make its parts fit together properly.

I. Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents provided by Owner, unless Contractor has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to Owner.

J. Contractor shall provide Owner access to the Work in preparation and progress wherever located.

K. With respect to any portion of the Work that, under the Scope of Work (Exhibit D) or as otherwise directed by Owner, requires submittal and review of shop drawings, product data, samples or similar submittals, (i) Contractor shall submit such items on a timely basis so as to cause no delay in the Work, and (ii) Contractor shall not perform such portion of the Work until such items have been reviewed and approved by Owner. The purpose of the submittal of such items is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the requirements set forth in the Contract Documents. Once any such item has been approved by Owner, Contractor's Work shall conform in full with the particulars of such item.

L. Before commencing any excavation or digging, Contractor shall make reasonable efforts to identify underground structures, including engaging an underground utility locating service.

M. Contractor is not authorized to use equipment, materials, supplies or facilities belonging to Owner or to a separate contractor performing other work at the Project ("Equipment"), unless specifically authorized to do so in a writing executed by the owner of the Equipment. Should Contractor, through its agents, employees, or Subcontractors, use any Equipment, whether such use is authorized or not: (i) Contractor shall do so at its own risk; (ii) Contractor shall examine the Equipment and satisfy itself as to the Equipment's condition before using any of the Equipment or permitting its employees, agents or subcontractors to do so; (iii) Contractor shall indemnify and hold the Owner (as well as the owner of the Equipment if a third party) harmless from and against claims, damages, losses and expenses, including attorneys'

fees and costs, resulting from any use of the Equipment by Contractor or its employees, agents or subcontractors; (iv) Contractor shall repair or replace, as necessary, any Equipment broken or damaged during such use; and (v) Contractor shall be fully liable for any unauthorized use of such Equipment.

N. Contractor represents and warrants that it is, and shall at all times remain, in full compliance with federal and state occupational safety and health administration ("OSHA") laws and regulations, including but not limited to the maintenance of an effective injury and illness prevention program, the provision of adequate safety and training programs for employees and routine inspections of equipment used in carrying out contractual duties. Contractor shall ensure that every Subcontractor, sub-subcontractor and supplier who provides services or supplies for the Work of this Contract is also, and shall at all times remain, in full compliance with OSHA laws and regulations. Contractor shall indemnify, defend and hold Owner harmless from and against any and all penalties, violations, assessments or damages, whether monetary or non-monetary, which result from any compliance failure or breach of this provision.

#### **20. Indemnification by Contractor**

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, its partners, lenders, consultants, agents and employees, from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts, errors or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such indemnification shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

With regard to claims against any person or entity indemnified under this Paragraph, by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **21. Items Furnished by Owner**

Unless job-specific requirements provide otherwise, Owner shall furnish and pay for surveys and a legal description of the site. Contractor shall be entitled to rely on the accuracy of information furnished by Owner but shall exercise proper precautions regarding the safe performance of the Work. Except for permits and fees that are the responsibility of Contractor, Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

#### **22. Owner's Right to Stop the Work**

If Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity.

#### **23. Owner's Right to Perform Construction and to Award Separate Contracts**

Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site, including similar provisions related to insurance and waiver of subrogation. If Contractor claims that such action by Owner has caused delay or additional cost to Contractor, Contractor shall make such claim as provided in Paragraph 33 (Claims and Disputes).

A. Contractor shall afford Owner and Owner's separate contractors, if any, reasonable opportunity at the site for introduction and storage of their materials and equipment and performance of their activities, and shall coordinate Contractor's activities with theirs.

B. Contractor shall reimburse Owner for obligations incurred by Owner to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

#### **24. Owner's Right to Demand Bond**

At any time Owner may require Contractor to furnish a surety bond issued by a company authorized to do surety business in California on a form acceptable to Owner, guaranteeing that Contractor will perform all its obligations under the Contract and will pay for all Work and material furnished to the job. This bond shall be in an amount equal to the value of the Work remaining to be done under the Contract. Owner shall pay the premium on any such bond. Contractor's failure to furnish the bond within ten days after Owner's written demand shall constitute a material breach of this Contract and shall entitle Owner to eject Contractor from the Project and have the Work performed by others. In this event, Contractor shall promptly and peaceably vacate the premises, leaving at the site all tools, equipment, and materials supplied for completion of the work. If the cost of completing the Work exceeds the unpaid balance of the Contract Sum, Contractor shall, on demand, reimburse Owner for the difference. If the cost of completion is less than the unpaid balance of the Contract sum, Owner shall remit the difference to Contractor, to the extent necessary to reimburse Contractor for the portion of the Work actually completed by Contractor.

#### **25. Owner's Representative**

A. Owner may appoint an Owner's Representative, a progress payment Consultant and/or one or more other agents ("Owner's Agent"). The Owner's Representative will provide administration of the Contract and will represent Owner at all times for purposes of the Contract. One or more of the responsibilities of the Owner's Representative may be performed by the progress payment Consultant or other Owner's Agent.

B. The Owner's Representative will visit the site from time to time as appropriate to the stage of Contractor's operations (1) to become generally familiar with and to keep Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to protect Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Representative will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's rights and responsibilities under the Contract Documents.

C. Based on the Owner's Representative's evaluations of the Work and of the Contractor's Progress Payment Requests, the Owner's Representative will review and certify the amounts due Contractor.

D. The Owner's Representative will have authority to stop Work and to reject Work that does not conform to the Contract Documents.

E. The Owner's Representative will, in a timely manner, review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

## 26. Changes in the Work

Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, by issuing written change orders (each a "Change Order") from time to time, in which case the Contract Sum and Work Schedule shall be adjusted in a fair and reasonable manner. Contractor shall sign and return to Owner a copy of each Change Order.

A. If Owner issues a Change Order and the parties are unable to agree on the amount of the adjustment in the Contract Sum, or the adjustment in the Work Schedule, Contractor shall nevertheless perform the Work as modified, and such disagreements shall be determined by negotiation, mediation or arbitration.

B. Owner may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Work Schedule and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Contractor, who shall carry out such written orders promptly.

C. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents and such conditions could not reasonably have been anticipated or foreseen by Contractor, the Contract Sum and Work Schedule shall be equitably adjusted, and a Change Order reflecting such adjustment shall be issued.

## 27. Tests and Inspections

Tests, inspection and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority. Owner shall bear the costs of any tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, except that if any of the Work fails to pass any such test, then Contractor shall pay for any Subsequent testing of such Work.

## 28. Contractor's Warranty

Contractor agrees and warrants to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty excludes remedy for damage or defect caused by (i) abuse, (ii) modifications not executed by Contractor, (iii) improper or insufficient maintenance, (iv) improper operation or (v) normal wear and tear and normal usage. This warranty shall survive acceptance of the Work under the Contract and termination of the Contract. It shall be in addition to the terms of any other warranty or obligation, such as manufacturer warranties, whether or not specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations. All manufacturer and subcontractor warranties shall inure to the Owner upon completion of the contract work.

## 29. Correction of Work

Contractor shall promptly correct Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, shall be borne by Contractor.

A. In addition to Contractor's obligations under Paragraph 28 (Contractor's Warranty), if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 3 (Commencement and Completion), or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if Owner fails to notify Contractor and give Contractor an opportunity to make the correction, Owner waives the rights to require correction by Contractor and to make a claim for breach of warranty.

B. Contractor agrees that with respect to any corrective work which relates to the habitability (such as water leaks, escape window operation, exit door operation, inoperable furnace etc.) of an apartment or life safety issues (such as fire sprinklers, fire alarms and site lightning), as reasonably determined by Owner, Contractor shall respond to Owner's notice and commence the corrective work as quickly as possible, but in any event within 24 hours, irrespective of whether such 24-hour period occurs on a weekend or legal holiday. All other corrective work will be commenced within 72 hours after receipt of notice from the Owner.

C. If Contractor fails to undertake required corrective work within the applicable period of time or fails to complete corrective work after such work has been initiated, then in either such event, Owner shall have the right, but not the obligation, to complete such corrective work. In such event, Contractor shall reimburse Owner upon demand for all costs and expenses incurred by Owner in completing the corrective work, together with an administrative fee equal to ten (10%) percent of the costs and expenses so incurred by Owner, and all such work shall be performed so as to minimize, to the extent reasonably practicable, disruption of Owner's operations.

D. For any portion of the Work performed after Final Completion, the Warranty Period shall run for a period of one year following the actual performance of such portion of the Work.

### **30. Hazardous Materials**

A. *Definition of Hazardous Material.* "Hazardous Material" means, without limitation, any substance, chemical, compound or mixture that is (or that contains any substance, chemical, compound or mixture that is) defined as follows under the following statutes or regulations, as amended from time to time, or any successor statutes or regulations thereto:

(1) a "Hazardous Substance," "Hazardous Material," "Hazardous Waste" or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Hazardous Material Transportation Act, 49 U.S.C. Section 1801, et seq., or the Resource, Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq;

(2) "Extremely Hazardous Waste," a "Hazardous Waste," or a "Restricted Hazardous Waste," under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or as listed pursuant to Section 25140 of the California Health and Safety Code;

(3) a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25281, 25316 or 25501 of the California Health and Safety Code;

(4) "Oil" or a "Hazardous Substance" under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydrocarbonic substance or by-product;

(5) any substance or material listed under Section 66680, et seq., or defined as hazardous or extremely hazardous pursuant to Section 66693 et seq., of Title 22 of the California Code of Regulations, Division 4, Chapter 30;

(6) any substance or material listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code;

(7) a material that due to its characteristics of interaction with one or more other substances, chemical compounds or mixtures, damages or threatens to damage health, safety or the environment or is required by any law or public agency to be remediated, including remediation that such law or public agency requires in order for the property to be put to any lawful purpose; and

(8) any material the presence of which would require mediation pursuant to the guidelines set forth in the California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank.

B. *Definition of Environmental Laws.* "Environmental Laws" means all provisions of all Federal, State and local regulations and laws regulating or in any way affecting the transportation, possession, storage, use, removal and/or disposal of any Hazardous Material, including without limitation the warning and notice requirements of all such laws. "Environmental Laws" includes, without limitation, (i) Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986), (ii) any laws relating to asbestos (including but not limited to California Health and Safety Code Sections 25910 through 25913 and 25915 through 25924) or polychlorinated biphenyl ("PCB") (including but not limited to Section 2601 of Title 15 of the United States Code, (iii) OSHA, (iv) CALOSHA, and (v) the Clean Air Act and related state acts).

C. *Definition of Existing Environmental Condition.* "Existing Environmental Condition" means the presence at the site of material found by a qualified specialist to be a hazardous or toxic material.

D. *Definition of Prohibited Materials.* "Prohibited Materials" means asbestos, polychlorinated biphenyl (PCB), urea formaldehyde, lead-based solder in plumbing, lead-based paint, or any other known hazardous substance whose use is prohibited by law at the time of construction.

E. *Compliance with Laws.* Contractor shall comply with all federal, state and local laws, rules and regulations concerning environmental pollution, health and safety. In addition, Contractor shall comply, and shall cause all persons under the control of Contractor to comply, with all Environmental Laws.

F. *Notification to Owner.* If Environmental Laws require Owner to notify or warn any person of the presence of any Hazardous Material, and such Hazardous Material will be or is being used on the site, Contractor shall, prior to harmful exposure of any person to such Hazardous Material, give written notice of the name and chemical composition thereof to Owner's Representative in compliance with Environmental Laws and in sufficient detail and time to (i) permit Owner and other contractors and employers on the site to comply with Environmental Laws, or (ii) allow Owner, acting through Owner's Representative, to forbid the use of such Hazardous Material on or in any way related to the site, which Owner may do in its sole

discretion. If Owner forbids the use of any Hazardous Material on the site, Contractor shall be responsible for finding and informing Owner of an appropriate substitute material, which shall be used solely with Owner's written approval.

G. *Prohibited Materials.* Contractor shall not incorporate into the Work or into any building, building component, improvement or structure, or otherwise leave on the site any Prohibited Materials, without Owner's prior written consent. Owner may, from time to time, require Contractor to furnish a certification that Contractor has not incorporated any Prohibited Materials, other than those that have been approved by Owner, into any building or other improvement on the site. Contractor shall be responsible for any damages and costs resulting from Contractor's failure to comply with this Subparagraph, including the cost of any clean-up and/or remediation.

H. *Cessation of Work.* In the event Contractor encounters on the site material reasonably believed to be hazardous or toxic which has not been rendered harmless (including without limitation asbestos and polychlorinated biphenyl (PCB)), and reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting therefrom, Contractor shall immediately stop Work in the area affected and report the condition to Owner both orally and in writing. Contractor shall, however, stop work only in the affected area and shall redeploy the Work in the areas of the site that are not affected by such condition. Owner shall retain at its own expense a qualified specialist to examine the suspected hazardous or toxic materials. Should the examination conclude that there is an Existing Environmental Condition, Owner at its own expense shall retain a separate contractor to perform any necessary clean-up or abatement. The Work in the affected area shall recommence when (i) Owner's qualified specialist has certified that any required remediation or removal has been completed, or that the material identified by the Contractor does not require any remediation or special procedure for removal, and/or (ii) Contractor has been provided a work plan to allow the Work to continue. Any delay or additional cost incurred by Contractor relating to the performance of the Work due to an Existing Environmental Condition that was not attributable to an act or omission of Contractor shall be set forth in a Change Order and the expense borne by Owner.

I. *Owner's Indemnification.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor, Subcontractor, and agents and employees of either of them, from and against any claims, damages losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if:

(1) the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible personal property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity; or

(2) without negligence on the part of Contractor, Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents.

J. *Disclosure.* Owner discloses the existence of environmental conditions at the Project, as set forth in materials attached as Exhibit G (Environmental Notices).

K. ***Asbestos Notices.***

**(1) ASBESTOS WARNING AND NOTICE.** In buildings built and completed before 1980, decorative acoustic ceiling surfacing materials, wallboard surfacing texturing and wallboard joint compound surfacing material, drywall surfacing texture, linoleum and tile floor coverings and their glues, certain heating

**system duct wrappings and various roof materials contain asbestos fibers. Do not disturb these materials or any other materials that you suspect may contain asbestos, unless you have been specifically authorized to do so and you have a work plan, approved by Owner, in place to control the exposures to asbestos and to protect human health and the environment. Contact building management immediately in the event of an accidental disturbance.**

**(2) EPA Asbestos Notice: CANCER AND LUNG DISEASE HAZARD, AVOID CREATING DUST.**

**(3) California Proposition 65 Notice: WARNING: THESE BUILDINGS CONTAIN ASBESTOS, A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER.**

### **31. Termination by Contractor**

If for a period of 30 days Owner fails to make any payment after it becomes due, through no fault of Contractor, Contractor may, upon seven additional days' written notice to Owner, terminate the Contract and recover from Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project. Other than as specified in the preceding sentence, in any dispute between the parties over performance of the Work, the interpretation of this Contract, extra work, delay, disruption or otherwise, if the parties are unable to resolve such dispute by negotiation, Contractor shall nevertheless continue the Work diligently to completion, and will neither rescind this Contract nor stop the progress of the Work, but will submit such dispute to determination by mediation or arbitration, as provided in Paragraph 33 (Claims and Disputes).

### **32. Termination by Owner**

Owner may terminate the Contract for cause if Contractor (i) refuses or fails to supply enough properly skilled workers or proper materials; (ii) fails to make payments to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors; (iii) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; (iv) is not progressing toward completion of the Work in a timely manner satisfactory to Owner, (v) fails, in the judgment of Owner, to meet Owner's standard of work quality, or (vi) otherwise is guilty of substantial breach of a provision of the Contract. Such termination shall be effective immediately upon written notice to Contractor, after which Owner may, without prejudice to any other available remedy, (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and (b) finish the Work by whatever reasonable method Owner may deem expedient. Upon Contractor's written request, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner in finishing the Work. When Owner terminates the Contract as provided in this Paragraph, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, and other damages incurred by Owner and not expressly waived, such excess shall be paid to Contractor, to the extent necessary to compensate Contractor for the portion of the Work actually completed by Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Owner.

In addition to Owner's right to terminate this Agreement for cause, as set forth above, Owner may terminate this Agreement without cause, upon ten (10) days written notice to Contractor for Owner's convenience. Upon termination for convenience, Contractor shall be entitled to payment for Work properly performed prior to notice of termination, and for costs incurred directly as a result of such termination; provided, however, that Contractor shall not be entitled to recover lost profits or similar consequential consideration.

### 33. Claims and Disputes

A. *Mediation Prior to Litigation.* In the event of any claim, dispute or other matter in question arising out of or relating to this Contract, the parties may endeavor to resolve the matter by mediation provided that both parties can come to a mutual agreement regarding conditions of mediation. Should the parties be unable to agree on conditions of mediation then they shall proceed to settle their dispute through litigation. Unless the parties agree otherwise, mediation shall be in accordance with the Construction Industry Mediation rules of the American Arbitration Association ("AAA") currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the AAA. The request shall be made at least sixty (60) days prior to the commencement of litigation.

B. *Forum.* The forum for any mediation or litigation shall be, if possible, in the County of San Mateo, California, or otherwise in the county in which the Property is located.

C. *Damages.* Under no circumstances will Owner be liable for indirect, special or consequential losses or damages including, but not limited to, loss of profits or revenues. Contractor acknowledges that officers, directors and employees of Owner have no personal liability under this Agreement and Contractor covenants not to sue such officers, directors and employees in their individual capacity.

D. *Attorneys' Fees.* In the event of any litigation between Owner and Contractor concerning the performance of Contractor's services, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party

E. *Applicable Law.* This Agreement shall be governed by, and construed according to, the laws of the State of California.

F. *Mechanics' Lien.* If a claim, dispute or other matter in question relates to or is the subject of a mechanics' lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by litigation.

### 34. Miscellaneous Provisions

A. *Assignment of Contract.* Neither party to this Contract shall assign the Contract, or payments due under the Contract, without written consent of the other, except that Owner has the right to assign this Contract to a lender if required in connection with financing.

B. *Notice.* Any notice required or permitted under this Contract shall be deemed given, if in writing, on the earlier of deliver or five days after deposit in the U.S. Mail, first-class postage pre-paid, and addressed to the party at the address shown in this Contract, although such address may be changed by written notice from one party to the other as necessary.

C. *Governing Law.* The Contract shall be governed by the law of the State of California, and in any action involving this Contract venue shall be in San Mateo County. This Paragraph shall not prevent application of the Federal Arbitration Act to any dispute that may arise under this Contract.

D. *Severability.* If any provision of the Contract Documents is held invalid, such invalidity shall not affect other provisions of the Contract Documents that can be given effect without the invalid provision, and to this end each provision of the Contract Documents is severable.

E. *Exhibits.* Each Exhibit attached to this Agreement is deemed incorporated herein by this reference, even if it is not otherwise referred to in this Contract.

Exhibit A	Property Description
Exhibit B	Drawings and Specifications
Exhibit C	Site Rules
Exhibit D	Scope of Work
Exhibit E	Work Schedule
Exhibit F	Schedule of Values
Exhibit G	Required Lien Waiver and Release Forms
Exhibit H	Environmental Notices
Exhibit I	Insurance Requirements
Exhibit J	HOME Funding Requirements

This Agreement entered into as of the day and year first written above.

AGREED AND ACCEPTED:

**Owner:**

By: \_\_\_\_\_  
Matthew O. Franklin, Secretary

**Contractor:**

**Exhibit A**

**Property Description**

**LEGAL DESCRIPTION**

**Exhibit B**

**Drawings and Specifications**

## Exhibit C

### Site Rules

1. Parking spaces on the site are designated and reserved exclusively for resident use. Prior to commencement of Work, Contractor shall arrange with Owner's Representative for availability of staging and parking areas. Contractor shall not leave vehicles on the site overnight without prior written consent of the Owner Representative.
2. Contractor shall return all keys to the on-site property manager at the end of each workday. No keys to resident apartments shall be taken away from the Property by Contractor's employees at any time.
3. Contractor employees and Subcontractors shall not use radios, boom boxes or other entertainment instruments on or near the site.
4. Contractor's employees shall be properly attired according to their standard trade uniforms.
5. Contractor shall not use restroom facilities at the site without prior consent of Owner Representative. Contractor shall provide and maintain its own portable sanitary facilities when the job will last longer than 2 weeks and when more than 4 employees will be present on the property. Contractor shall place portable sanitary facilities where designated by Owner Representative. Contractor shall maintain sanitary facilities in a clean and odorless condition. Contractor shall keep temporary sanitary facilities locked when Contractor employees are not on the site.
6. Contractor and Subcontractors shall not permit employees to use pool or other community gathering areas for lunch and break gathering.
7. Offensive language, verbal abuse and other forms of harassment will not be permitted on the site.
8. Working hours will be from 8:00 a.m. to 5:00 p.m. Monday through Friday unless otherwise specifically authorized in writing by Owner Representative.
9. Contractor shall maintain a clean and orderly worksite. Contractor shall clean up construction debris on a daily basis and at the end of each day shall leave a clean and orderly construction site. Construction debris shall be hauled off on a daily basis unless other arrangements are specifically made with Building Owner representative.

**Exhibit D**

**Scope of Work**

**Exhibit E**

**Work Schedule**

**Exhibit F**

**Schedule of Values**

**Exhibit G**

**Required Lien Waiver and Release Forms**

H-1 Conditional Waiver and Release Upon Progress Payment (1 page)

H-2 Conditional Waiver and Release Upon Final Payment (1 page)

H-3 Unconditional Waiver and Release Upon Progress Payment (1 page)

H-4 Unconditional Waiver and Release Upon Final Payment (1 page)

**CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

FROM: \_\_\_\_\_  
 (NAME OF PERSON/FIRM GIVING RELEASE) \_\_\_\_\_  
 (NAME OF PERSON/FIRM TO WHOM RELEASE IS GIVEN)  
 \_\_\_\_\_  
 (STREET ADDRESS) \_\_\_\_\_  
 (STREET ADDRESS)  
 \_\_\_\_\_  
 (CITY, STATE, ZIP) \_\_\_\_\_  
 (CITY, STATE, ZIP)

PROJECT: \_\_\_\_\_  
 (NAME OF PROJECT)  
 \_\_\_\_\_  
 (ADDRESS OF PROJECT)  
 \_\_\_\_\_  
 (CITY, STATE, ZIP)

The undersigned, \_\_\_\_\_, being first duly sworn, on oath, deposes and states: He/She has authority to execute a waiver of lien for and on behalf of \_\_\_\_\_ which has contracted with \_\_\_\_\_ for the providing of labor, services, equipment (NAME OF PERSON/FIRM GIVING RELEASE) (UNDERSIGNED CUSTOMER) and/or material to the above-listed Project, and the following information is true and accurate.

Contract Amount: \_\_\_\_\_ (A)  
 Previously Paid or Released: \_\_\_\_\_ (B)  
 Balance of Previous Retention: \_\_\_\_\_ (C)  
 Retention on This Payment: \_\_\_\_\_ (D)  
 This Payment: \_\_\_\_\_ (E)  
 Contract Balance Remaining: \_\_\_\_\_ (A) -(B+C+D+E)  
 Balance of Retention Held: \_\_\_\_\_ (C)+(E)

Now, therefore, upon receipt by the undersigned of a check from \_\_\_\_\_ for this Payment, in the sum of \_\_\_\_\_ (MAKER OF CHECK) (AMOUNT OF CHECK) payable to \_\_\_\_\_ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this (PAYEE OR PAYEES OF CHECK) document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_ (OWNER OF PROJECT) located at \_\_\_\_\_ (JOB DESCRIPTION) to the following extent. This release covers a progress payment for labor, services, equipment or material furnished to \_\_\_\_\_ (UNDERSIGNED CUSTOMER)

through \_\_\_\_\_ only and does not cover the Balance of Retention Held and any retention retained after the release date; extras furnished before the release (RELEASE DATE) date, in the amount of \$0.00. for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ )  
 On , \_\_\_\_\_ before me, \_\_\_\_\_ a  
 \_\_\_\_\_ )  
 (COMPANY NAME)  
 BY: \_\_\_\_\_ )  
 (SIGNATURE)

Notary Public, personally appeared, \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be The person(s) whose name(s) is/are subscribed to within instrument authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument WITNESS my hand and official seal.

\_\_\_\_\_  
 (TITLE)  
**Each Lien Release Must be Signed By a Corporate Officer or Principal and Notarized.**

Signature \_\_\_\_\_ Notary Public \_\_\_\_\_ (Initial)

NOTE: CIVIL CODE 3262 (d)(2) PROVIDES: Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form set forth above.

**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

FROM: \_\_\_\_\_ (NAME OF PERSON/FIRM GIVING RELEASE) \_\_\_\_\_ (NAME OF PERSON/FIRM TO WHOM RELEASE IS GIVEN)  
\_\_\_\_\_  
(STREET ADDRESS) \_\_\_\_\_ (STREET ADDRESS)  
\_\_\_\_\_  
(CITY, STATE, ZIP) \_\_\_\_\_ (CITY, STATE, ZIP)

PROJECT: \_\_\_\_\_ (NAME OF PROJECT)  
\_\_\_\_\_  
(ADDRESS OF PROJECT)  
\_\_\_\_\_  
(CITY, STATE, ZIP)

The undersigned, \_\_\_\_\_, being first duly sworn, on oath, deposes and states: He/She has authority to execute a waiver of lien for and on behalf of \_\_\_\_\_ which has contracted with \_\_\_\_\_ for the providing of labor, services, (NAME OF PERSON/FIRM GIVING RELEASE) (UNDERSIGNED CUSTOMER) equipment and/or material to the above-listed Project, and the following information is true and accurate. Now, therefore, upon receipt by the undersigned of a check from \_\_\_\_\_ for this Payment, in the sum of \_\_\_\_\_ payable to \_\_\_\_\_ (MAKER OF CHECK) (AMOUNT OF CHECK) (PAYEE OR PAYEES OF CHECK) and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

\_\_\_\_\_  
(OWNER OF PROJECT)  
located at \_\_\_\_\_ (JOB DESCRIPTION)  
to the following extent. This release covers a progress payment for labor, services, equipment or material furnished to \_\_\_\_\_ (UNDERSIGNED CUSTOMER)

This release covers the final payment to the undersigned for all labor, services, equipment or materials furnished on the Project, except for disputed claims for additional work in the amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On , \_\_\_\_\_ before me, \_\_\_\_\_ a  
Notary Public, personally appeared, \_\_\_\_\_  
personally known to me (or proved to me on the basis of satisfactory evidence) to be  
The person(s) whose name(s) is/are subscribed to within instrument authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument

\_\_\_\_\_  
(COMPANY NAME)  
BY: \_\_\_\_\_  
\_\_\_\_\_  
(SIGNATURE)  
\_\_\_\_\_  
(TITLE)

**Each Lien Release Must be Signed By a Corporate Officer or Principal and Notarized.**

WITNESS my hand and official seal.  
Signature \_\_\_\_\_ Notary Public \_\_\_\_\_ (Initial)

Retention payments will be withheld until such time as Final Releases from all subcontractors and suppliers have been furnished.

**NOTE: CIVIL CODE 3262 (d)(2) PROVIDES:** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver an release, the waiver and release shall follow substantially the form set forth above.

**UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

FROM: \_\_\_\_\_ (NAME OF PERSON/FIRM GIVING RELEASE) \_\_\_\_\_ (NAME OF PERSON/FIRM TO WHOM RELEASE IS GIVEN)  
\_\_\_\_\_  
(STREET ADDRESS) (STREET ADDRESS)  
\_\_\_\_\_  
(CITY, STATE, ZIP) (CITY, STATE, ZIP)

PROJECT: \_\_\_\_\_ (NAME OF PROJECT)  
\_\_\_\_\_  
(ADDRESS OF PROJECT)  
\_\_\_\_\_  
(CITY, STATE, ZIP)

The undersigned, \_\_\_\_\_, being first duly sworn, on oath, deposes and states: He/She has authority to execute a waiver of lien for and on behalf of

\_\_\_\_\_ which has contracted with \_\_\_\_\_ for the providing  
(NAME OF PERSON/FIRM GIVING RELEASE) (UNDERSIGNED CUSTOMER)  
of labor, services, equipment and/or materials to the to the above-listed Project. The undersigned has been paid in full for all labor, equipment or materials furnished to

\_\_\_\_\_  
(UNDERSIGNED CUSTOMER)

on the Project of \_\_\_\_\_  
(OWNER OF PROJECT)

located at \_\_\_\_\_  
(JOB DESCRIPTION)

and does hereby waive and release any right to a mechanics lien, stop notice, or any right against a labor and material bond for the Project.

STATE OF \_\_\_\_\_ )

\_\_\_\_\_  
(COMPANY NAME)

COUNTY OF \_\_\_\_\_ )

BY: \_\_\_\_\_

On , \_\_\_\_\_ before me, \_\_\_\_\_ a

\_\_\_\_\_  
(SIGNATURE)

Notary Public, personally appeared, \_\_\_\_\_  
personally known to me (or proved to me on the basis of satisfactory evidence) to be  
The person(s) whose name(s) is/are subscribed to within instrument authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument

\_\_\_\_\_  
(TITLE)

**Each Lien Release Must be Signed By a  
Corporate Officer or Principal and Notarized.**

WITNESS my hand and official seal.

Signature \_\_\_\_\_ Notary Public

\_\_\_\_\_  
(Initial)

been paid. If you have not been Retention Payments will be withheld until such time as Final Releases from all Subcontractors and Suppliers have been furnished.

**NOTICE TO PERSONS SIGNING THIS WAIVER:** This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not paid, us a conditional release form.

**NOTE: CIVIL CODE 3262 (d)(2) PROVIDES:** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the form set forth above.

**UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

FROM: \_\_\_\_\_  
(NAME OF PERSON/FIRM GIVING RELEASE) (NAME OF PERSON/FIRM TO WHOM RELEASE IS GIVEN)  
\_\_\_\_\_  
(STREET ADDRESS) (STREET ADDRESS)  
\_\_\_\_\_  
(CITY, STATE, ZIP) (CITY, STATE, ZIP)

PROJECT: \_\_\_\_\_  
(NAME OF PROJECT)  
\_\_\_\_\_  
(ADDRESS OF PROJECT)  
\_\_\_\_\_  
(CITY, STATE, ZIP)

The undersigned, \_\_\_\_\_, being first duly sworn, on oath, deposes and states: He/She has authority to execute a waiver of lien for and on behalf of \_\_\_\_\_ which has contracted with \_\_\_\_\_ for the providing of labor, services, equipment and/or material to the above-listed Project.  
(NAME OF PERSON/FIRM GIVING RELEASE) (UNDERSIGNED CUSTOMER)

The undersigned has been paid and received:  
A) A progress payment in the sum of \$ \_\_\_\_\_ (LIST MOST RECENT PROGRESS PAYMENT RECEIVED) (Dollars and Cents)  
B) Total cumulative progress payments, including the amount shown in "A" above, of \$ \_\_\_\_\_ for labor, services, equipment, or material furnished to \_\_\_\_\_ (UNDERSIGNED'S CUSTOMER)  
on the Project of \_\_\_\_\_ (OWNER OF PROJECT)  
located at \_\_\_\_\_ (JOB DESCRIPTION)

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment or materials furnished to \_\_\_\_\_ (UNDERSIGNED'S CUSTOMER)

through \_\_\_\_\_ (Date) only and does not cover any retentions retained before or after the release date, extras furnished before the release date, in the amount of \$ \_\_\_\_\_, for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )  
On , \_\_\_\_\_ before me, \_\_\_\_\_ a  
Notary Public, personally appeared, \_\_\_\_\_  
personally known to me (or proved to me on the basis of satisfactory evidence) to be  
The person(s) whose name(s) is/are subscribed to within instrument authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument

\_\_\_\_\_  
(COMPANY NAME)  
BY: \_\_\_\_\_  
\_\_\_\_\_  
(SIGNATURE)  
\_\_\_\_\_  
(TITLE)

**Each Lien Release Must be Signed By a Corporate Officer or Principal and Notarized.**

WITNESS my hand and official seal.  
Signature \_\_\_\_\_ Notary Public \_\_\_\_\_  
(Initial)

**NOTE: CIVIL CODE 3262 (d)(2) PROVIDES:** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantial

**Exhibit H**

**Environmental Notices**

N/A – Not applicable to this project

**Exhibit I**

**Insurance  
(Rev. 05\_0711)**

**Insurance Provided by Contractor**

If any insurance requirements of any lender are made a part of this contract, then the contractor must comply with those lender requirements where they are greater than the requirements listed herein.

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractor's Liability Insurance

Prior to commencement of any operations by or on behalf of Contractor relating to the project, Contractor shall at its sole expense, procure and maintain the following forms of insurance in companies and amounts acceptable to Owner.

11.1.1.1 Worker's Compensation and Employer's Liability Insurance.

Worker's Compensation insurance shall be provided as required by any applicable law or regulations. Employer's Liability insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident

\$1,000,000 policy limit for bodily injury by disease

\$1,000,000 each employee for bodily injury by disease

If there is any exposure to Contractor's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or under law, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Contractors' insurer shall provide a waiver of subrogation endorsement as required for in 11.1.2.

11.1.1.2 General Liability Insurance.

General Liability insurance shall be written on either the Comprehensive General Liability or Commercial General Liability policy form covering all operations by or on behalf of Contractor providing insurance for bodily injury, property damage and personal injury liability for the limits of liability indicated below and including coverage for:

- (1) premises and operations;
- (2) products and completed operations;
- (3) contractual liability insuring the obligations assumed by Contractor in this Agreement;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards;
- (6) liability which Contractor may incur as a result of operations, acts or omissions of its subcontractors, supplier or material men, and their agents or employees;
- (7) subsidence of land where available.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately to Contractor's work under this agreement.

One of the following coverage forms is required:

- Comprehensive General Liability
- Commercial General Liability (Occurrence)

A "CLAIMS MADE" or "Modified Occurrence" form is not acceptable without prior approval.

#### 11.1.1.2.1 Comprehensive General Liability

If Contractor's General Liability insurance is a Comprehensive General Liability policy, the limits of liability shall not be less than a combined single limit for bodily injury, property damage and personal injury liability of \$1,000,000 each occurrence; \$1,000,000 aggregate, where applicable.

The limits of liability may be a combination of Comprehensive General Liability insurance and Excess or Umbrella Liability insurance policies.

#### 11.1.1.2.2 Commercial General Liability

If Contractor's General Liability insurance is a Commercial General Liability (Occurrence) policy, the limits of liability shall not be less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage);

\$1,000,000 for personal injury;

\$1,000,000 aggregate for products-completed operations;

\$1,000,000 general aggregate;

If the policy does not have an endorsement providing that the general aggregate limit applies separately to this project or if defense costs are included in the general aggregate limit, then the required aggregate limit shall be \$2,000,000.

The limits of liability may be a combination of Commercial General Liability and Excess or Umbrella Liability insurance policies.

#### 11.1.1.3 Automobile Liability Insurance

Contractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 each accident for bodily injury and property damage. The limits of liability may be a combination of automobile liability insurance and Excess or Umbrella Liability policies.

If Contractor's general liability insurance is a Commercial General liability policy, then Contractor's automobile liability insurance policy shall include coverage for automobile contractual liability.

If Contractor or its subcontractors haul hazardous waste or contaminated materials, they must carry automobile liability insurance with coverage for pollution events arising from such cargo by vehicular accidents, leaks, releases or loading and unloading. Such coverage must be provided by not less than the attachment of the MCS 90 endorsement to the policy.

#### 11.1.1.4 Watercraft Liability Insurance.

If the Contractor or its subcontractors use any owned, leased, chartered or hired watercraft of any type in the performance of this contract, they shall maintain watercraft liability insurance in an amount not less than \$1,000,000 per occurrence.

11.1.1.5 Aircraft Liability Insurance.

If the Contractor or its subcontractors use any owned, leased chartered or hired aircraft of any type (including helicopters) in the performance of this contract, they shall maintain aircraft liability insurance in an amount not less than \$5,000,000 per occurrence including Passenger Liability or shall require their subcontractor to provide coverage in an amount not less than \$5,000,000 in limits and shall have named as additional insured Contractor and Owner. Acceptable evidence of coverage and additional insured status shall be provided prior to any work being performed.

11.1.1.6 Professional Liability Insurance.

If the Contractor or its subcontractors provides design or design/build services to the project, they shall provide professional liability insurance in an amount not less than \$1,000,000 and in forms acceptable to the Owner prior to commencement of design activities. The coverage must include coverage for contractual liability assumed under this agreement. Additional insured status for the project owner shall be provided prior to any work being performed.

11.1.1.7 Contractor's Pollution Liability Insurance.

If Contractor or its subcontractors are required to perform remedial operations such as excavation and/or removal of contaminated soils, asbestos, lead or other hazardous wastes, then they must carry pollution liability insurance with limits not less than \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage. If subcontractor or their subcontractors haul hazardous waste, they must carry Automobile Liability Insurance with a \$2,000,000 combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include endorsement MCS 90. Where Contractor or their subcontractor is installing mechanical systems or exterior insulation and finish systems, Contractor or subcontractor shall provide Contractor's Pollution Liability which includes coverage for "mold" with limits of liability of not less than \$1,000,000 per occurrence naming Owner as additional insured including coverage for contractual liability. The coverage must be written on an "Occurrence" form. A "CLAIMS MADE" or "Modified Occurrence" form is not acceptable without prior approval of Owner.

11.1.2 Additional Conditions

All insurance required under this agreement shall contain a waiver of subrogation as to the Owner, its directors, officer and employees.

All liability policies required under this agreement (except Worker's Compensation under 11.1.1.1 and Professional Liability under 11.1.1.6) shall include a provision or endorsement naming the Owner, the Architect, any Lender, and their directors, officers and employees as additional insureds. However, such provision or endorsement shall be provided using Insurance Services Office (ISO) form CG 2010 11/85, the combination of CG 2010 (10/01) and CG 2037 (10/01) or their equivalent. Such provision or endorsement shall not apply as respects pollution from premises owned, rented or controlled by the Owner. Each policy shall stipulate that the insurance afforded to the additional insureds shall apply as primary insurance and that any other insurance carried by the Owner, or any Lender, or their directors, officers or employees will be excess only and will not contribute.

11.1.3 Certificates of Insurance

Certificates of Insurance and related endorsements shall be furnished by Contractor to Owner before any work hereunder is commenced by or on behalf of Contractor. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice (except ten (10) days for non-payment of premium) by registered mail to Owner and Architect. Copies of all policies required by this agreement shall be made available to the Owner at Owner's request.

Contractor shall ensure that all tiers of its subcontractors procure and maintain insurance in like form including the Additional Insured requirements sets forth in 11.1.2. The limits of such insurance shall be agreed upon between Owner and Contractor.

11.1.3.1 List of Additional Insureds

See list attached at the end of this Exhibit.

11.1.4 Acceptance of Contractor Insurance

The required insurance shall be subject to the approval of Owner, but any acceptance of insurance certificates and endorsements by Owner shall in no way limit or relieve Contractor of the duties and responsibilities by said Contractor in this agreement. If higher limits or other forms of insurance are required in the Contract Documents, Contractor will comply with such requirements.

11.1.5 Failure of Owner to Enforce

Failure of Owner to enforce in a timely manner any of the provisions of this addendum shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this agreement. Any exceptions to the provisions of this addendum must be delineated in this agreement.

11.4 PROPERTY AND LOSS OF USE INSURANCE

11.4.1 Property Insurance

Unless otherwise provided, the Owner shall purchase and maintain property insurance in the amount of the initial contract sum for the entire Work at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents until substantial completion or certificate of occupancy, whichever is earlier. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work. Owner, Contractor and subcontractors of all tiers shall be named as insured under this policy.

11.4.1.1 Perils and Property Insured

Property insurance shall insure against risks of direct physical loss, except as otherwise excluded. The term "risks of direct physical loss" includes, without duplication of coverage, the perils of fire, extended coverage, theft, vandalism, malicious mischief, and collapse. The perils of earthquake and flood shall be excluded. Coverage for earthquake, flood or other perils shall not be required unless otherwise provided in the Contract Documents.

Coverage shall apply to the Work, any falsework, temporary buildings (but not trailers), and property or materials to be included in the Work and while at temporary locations away from the jobsite or in transit on land in the United States or its navigable waters, but not including tools, machinery, equipment, trailers and sheds belonging to the Contractor, Subcontractors or Sub-subcontractors. Coverage for debris removal including demolition occasioned by enforcement of any applicable legal requirements shall be included.

11.4.1.2 Deductibles

The property insurance shall be arranged with a minimum deductible of \$5,000 per loss, if reasonably available. The Contractor shall pay costs not covered because of such deductible. If the Owner can not reasonably obtain coverage with a deductible of \$5,000 per loss, but can obtain coverage with a higher deductible, then the Contractor shall pay costs not covered because of such higher deductible up to the amount of the deductible, but in no event greater than \$10,000 per loss.

11.4.2 Copies of Required Insurances

At the Contractor's request, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior notice has been given to the Owner.

11.4.3 Partial Occupancy

Partial Occupancy or Use in accordance with paragraph 9.9 shall be allowed as desired by the Owner. The property insurance required under paragraphs 11.3.1 and 11.3.2 shall include consent to such partial occupancy or use at inception of coverage.

11.4.4 Waivers of Subrogation. The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this paragraph 11.4.

11.4.5 A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor and shall require that subcontractors make payments to any of their sub-subcontractors in a similar manner.

11.4.6 Additional Insureds will be as follows:

Holy Family Associates, A California Limited Partner and its partners and lenders

Mid-Peninsula Housing Coalition

Mid-Peninsula Housing Management Corporation

Falcone Development Services, LLC

Mail certificates and endorsements C/O  
Attn: Construction Department  
Mid-Peninsula Housing Coalition  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404

**Project: Aster Park**  
**Contractor:**  
**MPHC Contract:**

Exhibit J

**CITY OF SUNNYVALE HOME INVESTMENT PARTNERSHIPS PROGRAM  
SUPPLEMENTAL GENERAL CONDITIONS**

The Project to be constructed pursuant to this Contract will be financed with assistance from the City of Sunnyvale Home Investment Partnerships Program (“the City”) and is subject to, but not limited to, the following Supplemental General Conditions.

These following Supplemental General Conditions are hereby made a part of this Contract and shall supplement and/or supersede any articles of these specifications in conflict therewith. Any subsequent and/or addenda issued after these specifications have been prepared shall supplement and/or supersede any articles of these specifications.

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  - (F) Standard Federal Equal Employment Opportunity Construction Contract Specifications
  - (G) Certificate of Non-Segregated Facilities
  - (H) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities
  - (I) Section 504 Rehabilitation Act of 1973
8. Prohibition on the Use of Federal Funds for Lobbying
9. Lead-Based Paint
10. Clean Air Act, Federal Water Pollution Control Act, E.O. 11738 and EPA Regulatory Compliance Provisions
11. Postings
12. State Prevailing Wages and federal Davis-Bacon Wages
13. Federal Davis-Bacon Wages
14. State of California Prevailing Wages
15. Failure to Include or Use of Incorrect Wage Decision
16. Federal Labor Standards Provisions U.S. Department of Housing and Urban Development Office of Labor Relations HUD-4010 (07/2003)
17. Pre-construction Conference
18. Order of Precedence of the Contract Documents.
19. Change Orders.
20. Compensation of the Contractor.
21. Time for Performance.
22. Delay.
23. Notice to Proceed.
24. Contractor's Warranty.

25. Purchase of Materials Under Title Retention Agreement.
26. Material Warranties.
27. Right of Entry and Inspection.
28. Agreement to Make Payments.
29. Insurance.
30. Hold Harmless.
31. Assignment.
32. Remedies.
33. Attorney's Fees.
34. Amendments.
35. Third Party Beneficiaries.
36. Notice.
37. Special Conditions.

### **Application to Subcontractors**

No money under this Contract shall be disbursed by the Contractor to any Subcontractor or agency except pursuant to a written contract which incorporates the conditions listed herein to the extent they are applicable.

### **Definitions**

The following terms as used in these Supplemental General Conditions are respectively defined as follows:

- (A) "**Contract**" means the entire agreement entered into between the Owner and the Contractor. It includes the Invitation for Bids, Instructions to Bidders, the form of Bid, the Bid Bond or Letter of Credit, the Performance and Payment Bond (or other form of assurance of completion), Non-Collusive Affidavit, Notice to Proceed, the form of Construction Contract, General Conditions of the Contract for Construction, any applicable Special Conditions, and specifications and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (B) "**Contractor**": A person, firm or corporation with whom the Contract is made by the Owner or Developer.
- (C) "**HUD**" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.
- (E) "**Project**": Work to be performed at the location of the Project, including the transportation of materials and supplies to or from the location of the Project by employees of the Contractor and any Subcontractor.
- (F) "**Subcontract**": Any agreement, other than one involving an employer-employee relationship, entered into by the Contractor calling for supplies or services required solely for the performance of the Contract or another Subcontract.
- (G) "**Subcontractor**": A person, firm or corporation supplying labor and materials or only labor for work at the site of the Project for, and under separate Contract or agreement with, the Contractor.

*This Section is applicable to all Contracts and Subcontracts over \$100,000. No Contract shall be made to parties listed on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension."*

**Certification, Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Lower Tier Covered Transactions** (Required by the regulations implementing Executive Order

12549 and Executive Order 12689), Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160 – 19211)).

By signing this Contract, the Contractor (the prospective recipient of Federal assistance funds) hereby certifies that:

- (A) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (B) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal/Contract.
- (C) Additionally:
  - 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 recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
  - 2. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has 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 meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
  - 4. The prospective recipient of Federal assistance funds 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 DOL.
  - 5. The prospective recipient of Federal assistance funds 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,” 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 is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the

eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Procurement or 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 (C)4, 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 DOL may pursue available remedies, including suspension and/or debarment.

*This Section is applicable to all Contracts and Subcontracts.*

**Workers' Compensation**

By signing this Contract, the Contractor hereby certifies that it is aware of the provisions of §3700 et seq. of the State of California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract.

*This Section is applicable to all Contracts and Subcontracts of \$100,000 or more.*

**Bonding Requirements (24 CFR Part 85.36)**

For construction or facility improvement Contracts or Subcontracts exceeding the simplified acquisition threshold [4 USC §403(11) currently sets the threshold at \$100,000], the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (A) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (B) A performance bond on the part of the Contractor for 100 percent of the Contract price. A "performance bond" is one executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract.
- (C) A payment bond on the part of the Contractor for 100 percent of the Contract price. A "payment bond" is one executed in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Contract.

*This Section is applicable to all Contracts and Subcontracts.*

**Access to Records and Retention of Records (24 CFR Part 92.508 & 24 CFR Part 85.36(I)(10) & (11))**

- (A) **Access to Records.** The City, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor and Subcontractor which are directly pertinent to this specific Contract, for the purpose of making audit, examination, excerpts, and transcriptions from such records including, but not limited to, Contracts, invoices, materials, payrolls, records of personnel,

conditions of employment and any other data relating to matters covered by this Contract. Such access shall be granted at any time during normal business hours and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary.

- (B) **Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, Contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.
- (C) **Retention of Records.** All required records must be maintained by the Contractor for five years after grantee makes final payments and all other pending matters are closed. (This is two years longer than the federal requirement of three years.)

### Equal Opportunity Provisions

- (A) *This Section is applicable to all Contracts and Subcontracts.*  
**Minority Business Enterprise** (Executive Orders 11625 "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise", dated October 13, 1971 and 12432 "Minority Business Enterprise Development", dated July 14, 1983) **and Women's Business Enterprise** (Executive Order 12138 "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise", dated May 18, 1979).

Affirmative steps must be taken by all contractors to assure that small, minority and women-owned businesses and firms located in labor surplus areas are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

1. Include any such qualified firms on solicitation lists.
  2. Assure that such firms are solicited whenever they are potential sources.
  3. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit such firms maximum opportunities for participation through Subcontracting.
  4. Where possible, establish delivery schedules which will encourage such participation.
  5. Keep records of efforts and results.
- (B) *This Section is applicable to all Contracts and Subcontracts.*  
**Civil Rights, HCD, and Age Discrimination Acts Assurances.**  
During the performance of this Contract, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this Contract, as required by Title VI of the Civil Rights Act of 1964 (42 USC 2000d <> 24 CFR Part 1), Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5309 <> 24 CFR Part 6), and the Age Discrimination Act of 1975, as amended (42 USC 6101-07 <> 24 CFR Part 146) which prohibits discrimination on the basis of age, and all implementing regulations.
  - (C) *This Section is applicable to all Contracts and Subcontracts.*  
**State Nondiscrimination Clause.**

1. During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition

(cancer), age (over 40), marital status, and denial of family care leave. Contractors and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractor and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f) et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full, Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all Subcontracts to perform work under the Contract.

(D) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more.*

**Equal Employment Opportunity Clause**

**Section 202 Equal Employment Opportunity Clause (Executive Order 11246 dated 9/24/65, as amended by Executive Order 11375 dated 10/13/67 and Executive Order 12086 dated Oct. 5, 1978, and as supplemented in Department of Labor Regulations (41 CFR, Part 60 1.4 (b))**

The Contractor hereby agrees that it will incorporate or cause to be incorporated the following equal opportunity clause into any Contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, Contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, Contract, loan, insurance, or guarantee:

**During the performance of this Contract, the Contractor agrees as follows:**

- 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.**
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post

copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government Contracts or federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work; provided that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the City and HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or Contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, government Contracts and federally-assisted construction Contracts, pursuant to the Executive

Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this funding commitment (Contract, loan, grant, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the City of Justice for appropriate legal proceedings.

- (E) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more.*  
**Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity: Executive Order 11246:**

The "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" require timetables and goals for minority and female participation, *expressed in percentage terms* for the Contractor's aggregate workforce *in each trade* on all construction work *in the covered area*, as follows:

**MINORITY AND FEMALE PARTICIPATION**  
**Percentages – Until Further Notice**

GOALS FOR GOALS  
 FOR  
MINORITY  
WOMEN  
 PARTICIPATION PARTICIPATION  
 IN EACH TRADE IN EACH TRADE

<b>All Trades</b>	<b>County: Santa Clara County</b>	<b>19.60 %</b>	<b>6.9% (Statewide)</b>
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<b>County</b>	<b>Minority Goal</b>	<b>County</b>	<b>Minority Goal</b>	<b>County</b>	<b>Minority Goal</b>
Alameda	25.80%	Marin	25.80%	San Luis Obispo	24.60%
Alpine	19.80%	Mariposa	19.80%	San Mateo	25.80%
Amador	19.80%	Mendocino	23.20%	Santa Barbara	19.70%
Butte	14.30%	Merced	19.80%	Santa Clara	19.60%
Calaveras	19.80%	Modoc	6.80%	Santa Cruz	14.90%
Colusa	14.30%	Mono	23.60%	Shasta	6.80%
Contra Costa	25.80%	Monterey	28.90%	Sierra	14.30%
Del Norte	6.60%	Napa	17.10%	Siskiyou	6.80%
El Dorado	14.30%	Nevada	14.30%	Solano	17.10%
Fresno	26.10%	Orange	11.90%	Sonoma	9.10%
Glenn	14.30%	Placer	16.10%	Stanislaus	12.30%
Humboldt	6.60%	Plumas	6.80%	Sutter	14.30%
Imperial	16.20%	Riverside	19.0%	Tehama	6.80%
Inyo	24.60%	Sacramento	16.10%	Trinity	6.60%
Kern	19.10%	San Benito	23.20%	Tulare	23.60%
Kings	23.60%	San Bernardino	19.0%	Tuolumne	19.80%

Lake	23.20%		San Diego	16.9%		Ventura	21.50%
Lassen	6.80%		San Francisco	25.80%		Yolo	16.10%
Los Angeles	28.30%		San Joaquin	24.30%		Yuba	14.30%
Madera	23.60%						

These goals are applicable to all of the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area and are applicable from the execution of this Contract until project completion.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR Part 60-4, paragraph 3(a), and its efforts to meet the goals established for the geographical area where the Contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its Projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction Subcontract in excess of ten thousand (\$10,000) dollars at any tier of construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Subcontractor; employer identification number of the Subcontractor, estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed. See #5 below for the list of OFCCP offices.
4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is the City of Sunnyvale in Santa Clara County.
5. List of California District OFCCP Offices

District Offices

Counties Served by District Office

Barbara,

OFCCP District Director  
U.S. Department of Labor  
11000 Wilshire Blvd., Suite 8103  
Los Angeles, CA 90024  
Ph (310) 235-6800/Fax (310) 235-6833

Inyo, Kern, Los Angeles, San Luis Obispo, Santa  
Tulare, Ventura

Sierra,  
Yolo,

OFCCP District Director  
Norte,  
U.S. Department of Labor  
Mendocino,  
1301 Clay St., Suite 1080-N  
Oakland, CA 94612  
Ph (510) 637-2938/Fax (510) 637-2946

Alameda, Amador, Butte, Colusa, Contra Costa, Del  
Norte,  
El Dorado, Glenn, Humboldt, Lake, Lassen, Marin,  
Modoc, Napa, Nevada, Placer, Plumas, Sacramento,  
San Francisco, San Joaquin, San Mateo, Shasta,  
Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity,  
Yuba

OFCCP District Director  
U.S. Department of Labor  
5675 Ruffin Rd, Suite 320  
San Diego, CA 92123-5378  
Ph (619) 557-6489/Fax (619) 557-6609

Imperial, San Diego

OFCCP District Director  
U.S. Department of Labor  
60 S. Market St., Suite 410  
San Jose, CA 95113-2328  
Ph (408) 291-7384/Fax (408) 291-7559

Alpine, Calaveras, Fresno, Kings, Madera, Mariposa,  
Merced, Mono, Monterey, San Benito, Santa Clara,  
Santa Cruz, Stanislaus, Tuolumne

OFCCP District Director  
U.S. Department of Labor  
34 Civic Center Plaza, Suite 712  
Santa Ana, CA 92712-2800  
Phone (714) 836-2784/Fax (714) 836-2781

Orange, Riverside, San Bernardino

(F) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more.*

**Standard Federal Equal Employment Opportunity Construction Contract Specifications: Executive Order 11246 (41 CFR Part 60-1):**

1. **As used in these specifications:**

- a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer Identification Number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, and the Indian Subcontinent, or the Pacific Islands); and
    - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, Subcontracts a portion of the work involving any construction trade, it shall physically include in each Subcontract in excess of ten thousand (\$10,000) dollars the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
  3. If the Contractor is participating (pursuant to 41 CFR Part 60-4.5) in a Hometown Plan

approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs (7a) through (7p) of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization, the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction Project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for

referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (7)b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female-focused news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for Subcontracts from minority and female construction companies, Contractors and suppliers, including circulation of solicitations to minority and female-focused Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a) through (7p). The efforts of a Contractor association, Joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7a) through (7p) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing Subcontracts as may be imposed or ordered pursuant to

Executive Order 11246 as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246 as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR Part 60-4-8.
  14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
  15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- (G) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more (Secretary of Labor May 6, 1967 order on the Elimination of Segregated Facilities (32 F.R. 7439, 19 May 1967) 41 CFR Part 60-1.8.*

**Certificate of Non-Segregated Facilities.**

The federally assisted construction Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The federally assisted construction Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The federally assisted construction Contractor agrees that a breach of this certification is a violation of the Section 202 Equal Opportunity Clause in this Contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

The federally assisted construction Contractor agrees that (except where it has obtained identical certifications from proposed Subcontractors for specified time period) it will obtain identical certifications from proposed Subcontractors prior to the award of Subcontracts

exceeding \$10,000 which are not exempt from the provisions of the Section 202 Equal Opportunity Clause, and that it will retain such certifications in its files; and that s/he will forward the following notice to such proposed Subcontractors (except where proposed Subcontractors have submitted identical certifications for specific time periods).

NOTE: Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

- (H) *This Section is applicable to all construction Contracts and Subcontracts of \$100,000 or more* **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities Section 3 Housing and Urban Development Act of 1968 (12 U.S.C. 1701 u <> 24 CFR Part 135).**

This agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u) as amended. The Section 3 clause requires that every applicant, recipient, contracting party, Contractor and Subcontractor shall incorporate, or cause to be incorporated, in all Contracts for work in connection with a Section 3 covered Project, the following clause (referred to as a Section 3 clause):

1. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects covered by section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to the Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract

certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

3. The Contractor agrees send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the said labor organization or workers' representative of Contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places available at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.
4. The Contractor agrees to include this Section 3 clause in every Subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the Subcontract or in this section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not Subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part

135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.

**Section 3 Plan:**

Specifically the Contractor agrees to implement, at a minimum, the following actions within the jurisdiction that the project is located. These actions are directed at increasing the utilization of lower income residents as employees and small businesses as Subcontractors and suppliers.

1. To implement Section 3 requirements by seeking the assistance of local officials in determining the exact boundaries of the applicable project area;
2. To attempt to recruit from the project area through local advertising media and signs placed at the proposed site for the project;
3. To continually recruit from a Contractor maintained directory of community service organizations, and public or private institutions operating within or serving the project area;
4. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists;
5. To formally contact unions, Subcontractors, and trade associations to secure their cooperation for this project;
6. To ensure that all appropriate project area business concerns are notified of pending Subcontract opportunities;
7. To maintain records, including copies of correspondence, memoranda, etc., which document all actions taken;
8. To provide the Section 3 workforce and business utilization reports required under this Contract;
9. To include the Section 3 clause in every Subcontract for work in connection this project;
10. To require all Subcontracting bidders on contracts exceeding \$10,000 to submit a Section 3 Plan including utilization goals and the specific steps planned to accomplish these goals; and
11. To insert this Section 3 Plan in all bid documents.



(I) *This Section is applicable to all Contracts and Subcontracts.*

**Section 504 Rehabilitation Act of 1973, as amended** (29 USC 794 <> 24 CFR Part 8);  
Affirmative Action for Workers with Disabilities (48 CFR 52.222-36)

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices, such as hiring, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Federal Rehabilitation Act of 1973, as amended (“Act”).
3. In the event of the Contractor’s non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the United States Department of Labor - Office of Federal Contract Compliance Programs (OFCCP) provided by or through OFCCP. Such notices shall state the Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and the rights of applicants and employees.
5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment qualified individuals with physical or mental disabilities.
6. The Contractor will include the provisions of this clause in every Subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 504 of the Act, so that such provisions will be binding upon each Subcontractor with respect to any Subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

*This Section is applicable to all Contracts and Subcontracts of \$100,000 or more. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.*

**Prohibition on the Use of Federal Funds for Lobbying (31 U.S.C. 1352)**

The Contractor executing this Contract hereby certifies and acknowledges to the best of his or her knowledge and belief that:

- (A) No Federal funds have been paid or will be paid, by or on behalf of the local government, 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 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 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, on 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 local government shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352;
- (C) The language of this certification shall be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Contractor understands that this certification is a material representation of fact upon which reliance was placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Contractor also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

*This Section is applicable to all Contracts and Subcontracts of \$100,000 or more.*

**Lead-Based Paint (42 USC 4821 et seq. and 24 CFR Part 35)**

The use of lead-based paint in the federally assisted construction or rehabilitation of residential structures (including day cares, senior centers, and community facilities) is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act [42 USC 4831(b)] and regulations in 24 CFR 35B. To the extent that contracted work involves residential structures, the Contractor and Subcontractors must follow the new regulations issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally assisted housing.

1. The Contractor and Subcontractors shall not use lead-based paint in residential structures and shall eliminate any lead-based paint hazards in residential structures that are rehabilitated.
2. At a minimum the Contractor and Subcontractors must comply with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325.
3. All workers involved in the disturbance of lead-based paint bearing surfaces must be trained in lead safe work practices.
4. At the conclusion of residential rehabilitation, the property must pass a lead hazard clearance test by a certified technician and lab. The lead level must meet the federal and California lead level threshold standards. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in 24 CFR 35.1350(d).

Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) prohibits the use of lead-based paint on any interior or exterior residential surfaces constructed or rehabilitated with Federal Assistance in any form.

*This Section is applicable to all Contracts and Subcontracts of \$100,000 or more.*

**Clean Air Act, Federal Water Pollution Control Act, E.O. 11738 and EPA Regulatory Compliance Provisions**

The Contractor agrees to the following clause and will include it in any Subcontracts over \$100,000:

During the performance of this Contract, the Contractor and all Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended. In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the Owner, the following:

- (A) A stipulation by the Contractor or Subcontractors that any facility to be utilized in the performance of any nonexempt Contract or Subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15.20.
- (B) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857c-8) and (33 U.S.C. 1318) relating to the inspection, monitoring, entry reports and information as well as all other requirements specified in said Section 114 and Section 308, and all regulations, and guidelines issued thereunder.
- (D) A stipulation that as a condition for the award of the Contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
- (E) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt Subcontract and requiring that the Contractor will take such actions as the Government may direct as a means of enforcing such provisions.

**Postings**

The following postings shall be prominently posted & accessible in conspicuous places at the site of work in locations that are available to employees and applicants for employment in the Project/work area:

- (A) All Projects
  1. United States Department of Labor - Occupational Safety & Health Administration: “You Have a Right to A Safe and Healthful Workplace” English (OSHA 3165) and Spanish (OSHA 3167)
  2. United States Department of Labor - Office of Federal Contract Compliance Programs: “The Equal Employment Opportunity (EEO) Poster” English, Spanish and Chinese [Mandarin], Tagalog, and Vietnamese (if available)
  3. Other federally required postings, as may be required by the United States Department of

Labor,

Office of Federal Contract Compliance Programs (OFCCP), or the United States Department of Housing and Urban Development (HUD).

3. State of California posters as may be required by the Division of Occupational Safety and Health (DOSH), Department of Industrial Relations (DIR), the Department of Fair Employment and Housing (DFEH), the Office of Environmental Health Hazard Assessment (OEHHA), or the Secretary of State.
- (B) Davis Bacon Projects (HOME Projects with 12 or more HOME-assisted units)
1. Davis-Bacon Prevailing Wage Rates for the Project
  2. United States Department of Labor:  
“Notice to Employees Working on Federally Financed Construction Projects”  
English (WH-1321Eng) and Spanish (WH-1321SP)

*This Section is applicable to all Contracts and Subcontracts to which federal Davis-Bacon Prevailing Wages apply.*

The Contractor is solely responsible for paying the correct prevailing wage rates to each of its workers. The Contractor shall pay federal Davis-Bacon Wages. Contractor shall cause all Subcontracts to include the provision that all Subcontractors shall pay federal Davis-Bacon Wages to all workers employed by such Subcontractors in the execution of the work who are subject to the terms of the State of California Labor Code Section 1770 et seq. and Davis Bacon and Related Acts (40 USC 276(a) 7 et seq.) as supplemented by Department of Labor Regulations (29 CFR, Part 5), and with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as supplemented by Department of Labor Regulations (29 CFR, Parts 5 and 1926).

*This Section is applicable to all Davis Bacon Projects (HOME Projects with 12 or more HOME-assisted units).*

#### **Federal Davis-Bacon Wages**

Wages paid on this Project shall not be less than the minimum wages determined by the U.S. Department of Labor as set forth in this Contract as Attachment number CA20100030 09/10/2010 CA30. Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276-a to a-7) as supplemented by Department of Labor Regulations (29 CFR, Part 5), and with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as supplemented by Department of Labor Regulations (29 CFR, Parts 5 and 1926). All specifications for construction Contracts and Subcontracts will contain the prevailing wage rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276-a to 276-C-5) and provision that overtime compensation will be paid in accordance with the Contract Work Hours and Safety Standards Act Regulations (29 CFR, Parts 5 and 1926). The Contract provisions shall require that these standards be met.

The appropriate Schedule of Minimum Hourly Wage Rates (U.S. Department of Labor: Davis-Bacon Wage Determination) is attached to this Contract as Attachment number CA20100030 09/10/2010 CA30. Contractor shall post, at each jobsite, a copy of such prevailing rate of per diem wages as determined by the U.S. Department of Labor.

The Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Owner, its Contractors and Subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Davis-Bacon Act (as supplemented by Department of Labor Regulations), and with the Contract Work Hours and Safety Standards Act (as supplemented by Department of Labor Regulations) in connection with construction under this Contract.

#### **Failure to Include or Use of Incorrect Wage Decision**

Failure to include the required Department of Labor Davis-Bacon Wage Determination or State of California: Department of Industrial Relations Wage Determination in bid documents or Contracts

will not relieve the owner, Contractor, or Subcontractor from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the owner must either terminate and re-solicit the Contract with the valid decision, or make the valid wage decision retroactive to the beginning of construction through supplemental agreement. The Contractor or Subcontractor, if not at fault, must be compensated for any increases in required wages resulting from such a change.

*This Section is applicable to all Davis Bacon Projects (HOME Projects with 12 or more HOME-assisted units.*

**Federal Labor Standards Provisions U.S. Department of Housing and Urban Development Office of Labor Relations HUD-4010 (07/2003)** previous edition is obsolete. Ref. Handbook 1344.1

### **Applicability**

The Project covered by this Contract is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the requirements applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits 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 HUD or the City, as HUD's designee, agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or the City, as HUD's designee, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or the City, as HUD's designee, or will notify HUD/the City within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
- (c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or the City, as HUD's designee, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD/the City shall refer the questions, including the views of all interested parties and the recommendation of HUD/the City, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD/the City or will notify HUD/the City within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control

Number 1215-0140.)

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same prime Contractor, or any other Federally-assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any Subcontractor, the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the Contract, HUD or the City, as HUD's designee, may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD/the City may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act Contracts.
  
3. (i) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)
  - (ii) (a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to HUD or the City, as HUD's designee, if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the sponsor, or Owner, as the case may be, for transmission to HUD/the City or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The

prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

- (b) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
  - (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph A.3.(ii)(b).
- (d) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (iii) The Contractor or Subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or the City, as HUD’s designee, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD/the City may, after written notice to the Contractor, sponsor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State

Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
5. **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this Contract.
6. **Subcontracts.** The Contractor or Subcontractor will insert in any Subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or the City, as HUD's designee, may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in this paragraph.
7. **Contract termination; debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and HUD or the City, as HUD's designee, the U.S. Department of Labor, or the employees or their representatives.
10. (i) **Certification of Eligibility.** By entering into this Contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD Contracts or participate in HUD programs pursuant to 24 CFR Part 24.
- (ii) No part of this Contract shall be Subcontracted to any person or firm ineligible for award of a Government Contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD Contracts or participate in HUD programs pursuant to 24 CFR Part 24.
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration, makes, utters or

publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both.”

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

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

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

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or the City, as HUD’s designee, shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal Contract with the same prime 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 subparagraph (2) of this paragraph.

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

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

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.
- (3) The Contractor shall include the provisions of this paragraph in every Subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any Subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

### **Pre-Construction Conference**

After the Contract(s) have been awarded, but before the start of construction, a conference will be held for the purpose of establishing lines of communication, authority, and responsibilities, clarifying procedures to be followed during construction, and discussing and making known items of mutual interest such as, but not limited to, the following:

- a) All construction details;
- b) Time frame of Project;
- c) Project supervision;
- d) Coordination with City or County officials;
- e) On-site inspections;
- f) Progress schedules and reports;
- g) Payrolls, payments to Contractors;
- h) Contract change orders;
- i) All Bonds and Certificate of Insurance Requirements;
- j) Safety;
- k) Federal labor requirements:
  - 1) Federal Labor Standards and Davis-Bacon Act;
  - 2) Contract Work Hours and Safety Standards Act – Overtime Compensation;
  - 3) Contractors must submit certified copies of weekly payrolls to the assigned Project manager for verification that appropriate wage rates were paid;
  - 4) Section 3;
  - 5) Prior to progress payments being made the Labor Compliance Coordinator will review all such payrolls upon receipt, sign and date the payroll following verification, and maintain such payrolls on file for review and monitoring purposes;
  - 6) The process of withholding progress payments;
  - 7) How disputes Concerning Labor Standards will be resolved;
  - 8) Compliance with Copland Regulations;
  - 9) Minutes of the pre-construction conference that document the discussion of federal regulations must be kept in the Project files;
  - 10) Certification of Eligibility (non-debarment);
  - 11) Required Subcontract Contract provisions.
- l) The construction site posting requirements;
- m) And other items pertinent to the Project, e.g., State Prevailing Wage requirements.

The Contractor shall arrange to have all supervisory personnel connected with the Project on hand to meet with representatives of the engineer/architect, prime Contractor, Subcontractor(s), inspector(s), labor standards coordinator and Owner to discuss any anticipated problems, responsibilities and obligations on a federally funded or federally assisted Project. The Pre-Construction Conference Agenda must be discussed and agreed upon by the Contractor and supervisory personnel before finalizing the document and conducting the Pre-Construction Conference. All those in attendance shall sign in.

Pre-construction detailed conference minutes shall be prepared by the Labor Compliance Coordinator that includes a list of all attendees. Copies of the minutes shall be distributed by the Labor Compliance Coordinator to all those in attendance. The pre-construction conference will in no way change the Contractor's responsibility to follow the requirements of the Contract documents.

**Order of Precedence of the Contract Documents.** The following listed documents constitute the entire contract between the parties for the construction of the Project and are collectively referred to herein as the "Contract or "the Construction Contract". In any interpretation of the terms or provisions of this Contract, or in the case of any inconsistency or conflict in such terms or provisions, the following documents shall be construed to govern the interpretation or inconsistency by giving precedence to the effect of the terms and provisions of such documents in the following order of priority:

- (A) These Supplemental General Conditions, including any Special Conditions thereto.
- (B) The Plans and Specifications.
- (C) The Standard Form of Contract Between Owner and Contractor (AIA Document A101, or other, as herein specified) and, where specifically included:
- (D) The General Conditions of the Contract for Construction, AIA Document A201.
- (E) Any Special or Supplemental Conditions to the Standard Form of Contract (AIA-A101) or General Conditions (AIA-A201).

**19. Change Orders.**

- (A) There shall be no change in the approved Plans and Specifications ("Change Order") except in accordance with this Paragraph. Unless otherwise specified in writing by the City, all Change Orders must be in writing and approved in writing by the City prior to implementation. Change Orders shall be submitted on a form acceptable to the City and signed by the Borrower, the Contractor and the Architect. Change Orders shall be accompanied by working drawings, an itemized cost statement, a written narrative of the proposed change and the reasons therefore, and such other supporting documentation as the City may reasonably require.
- (B) Except for such items as may be specifically described in an attachment to these Supplemental General Conditions, Change Orders requesting cost increases shall be approved only to the extent that they reflect approved changes in the scope of work or the Plans and Specifications. Any other cost changes arising from unanticipated increased cost of supplies, material, labor, equipment or subcontracting, and not reflecting a change in the scope of work or the Plans and Specifications will not be approved by the City.
- (C) Change Orders which result in an approved cost increase may include a percentage increment for Contractors' profit and general overhead. The percentage shall be limited to the percent specified in this Contract for Contractor's profit and general overhead and it may be applied only to approved costs for supplies, material, labor, equipment, and subcontracting. Any other contractual agreements notwithstanding, the combined amount of overhead and profit for both Contractor and any Subcontractor(s) shall not exceed a total of fourteen percent (14%) of the site work and structures cost.

**20. Compensation of the Contractor.** Compensation to the Contractor for completing the terms of these Supplemental General Conditions shall be included as part of the compensation specified in this Contract.

- 21. Time for Performance.** The work to be performed by the Contractor under this Contract shall be commenced no later than ten (10) days after issuance of a Notice to Proceed by the Owner to the Contractor, shall follow the construction schedule attached hereto and made a part hereof, and shall be completed within **TBD** calendar days following Contractor's written notice to Owner that work (including "mobilization") has commenced. A calendrical "Completion Date" shall be calculated by taking the date of commencement of construction and adding the allowed number of calendar days for performance. Following completion of all work, excluding minor Punchlist (nonconforming work) items, Owner shall, within ten (10) days, record a valid Notice of Completion at the appropriate local Recorder's Office. The Completion Date may not be extended without express written approval of the City.
- 22. Delay.** The Contractor shall promptly notify both the Owner and the Department in writing of any event causing delay or interruption of construction, or the timely completion of construction. The notice shall specify the particular work delayed and the cause and period of each delay. For details of the appropriate procedures in the case of delay, see Article 8, Paragraph 3 of the General Conditions of the Contract for Construction, which are a part of the Contract Documents.
- 23. Notice to Proceed.** The Contractor shall not commence work until the Owner has issued a Notice to Proceed. The Owner shall not issue a Notice to Proceed until so authorized by the City which shall be no sooner than the execution of all Loan Documents and all other Project-related documents by all authorized parties at the HOME Closing.
- 24. Contractor's Warranty.** The Contractor warrants that:
- (A) the construction cost set forth in the Contract provides for construction of the Project in accordance with Contract Documents and all applicable local, state and federal laws, regulations, and building codes (collectively referred to hereafter as the "Building Standards") in effect at the time construction is commenced;
  - (B) the Project will be constructed in accordance with the Building Standards now in effect and the Contractor agrees to make, free of charge, any alterations necessary to bring the Project into compliance with the Building Standards in effect at the time construction is commenced (Contractor's financial liability for errors in the Construction Documents shall be limited by the provisions of Article 3.2.1 of the General Conditions of the Contract for Construction [AIA-A201, 1987], which are a part of the Construction Documents);
  - (C) the Project will be constructed in accordance with the Plans and Specifications and the Contractor agrees to make, free of charge, any alterations necessary to provide compliance with the Plans and Specifications; and;
  - (D) the Project will be constructed free of defects and the Contractor agrees to repair, free of charge, any defects from construction performed under this Contract which arise in the first year following the Completion Date. The Contractor shall provide security for this warranty in the form of a Performance Bond as discussed in Section 5, a completion assurance agreement, approved by the City and entered into by the Contractor, Owner and the City, or equivalent security acceptable to the City.
- 25. Purchase of Materials Under Title Retention Agreement.** Neither the Owner nor Contractor shall purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Project under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Project, unless authorized in writing by the City.
- 26. Material Warranties.** The Contractor shall deliver to the Owner all Project warranty documents, including warranties on appliances and on building components (such as roof and siding) etc. The

Owner shall furnish to the City prior to the issuance of the City's Certificate of Completion a copy of the Record Set of Drawings ("As-Built") along with a written certification that the Owner is in possession all said documents along with all service manuals and operating instructions.

**27. Right of Entry and Inspection.**

- (A) At all times during the term of this Contract, the Lenders and their agents shall have the right of entry and free access to the Project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in or about the Project and all Project records related to performance of the terms of this Contract. Based on the findings during any inspection, the City may issue Correction Notices, or Stop Work Orders. In all cases, the Contractor shall correct any items noted in the Correction Notice or Stop Work Order, and request a reinspection, prior to proceeding to the next phase of work. The Contractor shall bear full responsibility for removing/replacing any work necessary to bring the Project into compliance with the Plans and Specifications. The Owner shall reserve the right to halt future payments to the Contractor pending such corrections.
- (B) The City shall not have any affirmative duty to make any such inspection and shall not incur any liability for failing to do so. Once having undertaken any such inspection, the City shall not incur any liability for failing to do so properly or for failing to complete the same. The fact that such inspection may or may not have been made by the City shall not relieve the Owner or the Contractor of any obligation that they may otherwise have to inspect the Project.

**28. Agreement to Make Payments.** The Contractor agrees to pay all amounts when due for labor, work performed under Subcontract, or materials, supplies and equipment provided to the Project.

**Insurance.** The Contractor shall not commence work under this Contract until all insurance required in this Section is obtained, approved by and furnished to the City. Nor shall the Contractor allow any Subcontractor to commence work until all similar insurance required of the Subcontractor has been so obtained. All insurance certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days prior written notice has been given to the City. The insurance certificates shall be issued by an insurance company that is acceptable to the City and state that the coverage provided is primary to any other coverage available to the City. The following is the minimum insurance coverage that the Contractor shall carry:

- (A) Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
  - 1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - 2. Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the City.
  - 3. California Department of Housing and Community Development to be named as both additional insured and as a certificate holder.
- (B) Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have "non-owned and hired" coverage.
  - 1. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of "non-owned and hired" coverage.

2. California Department of Housing and Community Development to be named as both additional insured and as a certificate holder.

(C) Workers' Compensation Insurance - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Workers' Compensation: Statutory Limits

1. Any entity without employees needs to provide written statement stating that they do not have any employees.

2. California Department of Housing and Community Development to be named as a certificate holder.

**30. Hold Harmless.** The Contractor and Owner shall indemnify, defend and save harmless the City, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all Contractors, Subcontractors, material suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the construction of the Project and from any claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the construction.

**31. Assignment.**

(A) No part of this Contract or any obligations hereunder may be assigned by the Contractor without the prior written consent of all Lenders and the Owner except as provided herein.

(B) The Owner hereby expressly assigns to the City the right to exercise any and all of the Owner's rights and remedies pursuant to this Contract. The Contractor understands that this Assignment provides that the City may undertake the completion of the Project and the Contractor agrees to perform the work required under this Contract if the Owner defaults and the Construction Lender or Department undertakes to cause such work to be performed.

(C) The Contractor hereby expressly assigns all construction warranties of the Contractor on the Project to the Construction Lenders. The Owner hereby consents to this Assignment.

(D) The Assignments included in this Contract shall become effective upon the Owner's default under any of the Loan Documents and notice thereof by the City to the OWNER. Until such notice, the OWNER shall remain liable for and shall fulfill all its covenants, terms, conditions, agreements and obligations under this Contract and related documents. Failure of the City to exercise its rights pursuant to these Assignments in the event of default by the OWNER shall not be a waiver of such rights.

**32. Remedies.** In the event of the failure of any of the parties hereto to honor the rights of the City as provided in this Contract, the City shall have, in addition to any other remedy provided for in law or in equity, the right to cancel the loan commitment made to the OWNER for the Project.

**33. Attorney's Fees.** In any action to enforce this Contract, the prevailing party shall be entitled to an award of such reasonable attorney's fees, expenses and costs as may be fixed by the court.

**34. Amendments.** This Contract shall not be amended without the written agreement of the parties hereto.

**35. Third Party Beneficiaries.** OWNER and Contractor agree that all Lenders on the Project, including the City, shall be and remain third party beneficiaries to the Contract.

**36. Notice.** Notices and other communications required by these Supplemental General Conditions shall be delivered by messenger to the addresses provided below or sent by U.S. Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To: The City of Sunnyvale Community Development Department  
Housing Division  
PO Box 3707  
Sunnyvale, CA 94088-3707  
Attn: Housing Officer

To Owner:

To Contractor:

These addresses may be changed by a notice given in the same manner. Notices shall be effective on receipt.

**37. Special Conditions.** The following special conditions, if any, are made a part of these Supplemental General Conditions.

The undersigned have executed these Supplemental General Conditions on the dates set forth below their respective signatures. (Type or Print all information except signatures, which shall be hand-written in ink.)

**Owner** (California Limited Partnership)

By: **MP Aster Park, Inc**

a California nonprofit public benefit corporation

By: \_\_\_\_\_  
(Signature)

**Matthew O. Franklin**  
\_\_\_\_\_  
(Name)

Its: **Assistant Secretary**  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(mm/dd/yy)

**Contractor**

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Contractor License Number)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

Its: **President**  
\_\_\_\_\_  
(Title)

**Labor Standards Compliance Coordinator**

\_\_\_\_\_  
*(Name of Company)*

By: \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Name)*

Its: \_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(mm/dd/yy)*

**Project: Aster Park**  
**Contractor:**  
**MPHC Contract:**

**Exhibit K**

**HUD Form 2554**

See attached.

# Supplementary Conditions of the Contract for Construction

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

OMB Approval No. 2502-0470  
(Expires 5/31/2010)

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This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to set forth the obligations of the contractor or subcontractor performing under the covered contract. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

## Article 1 – Labor Standards

### Instructions

Whenever only FHA mortgage insurance is involved, use paragraph (A) and (C) of Article 1 – Labor Standards. Whenever any direct form of assistance (Section 8, Section 202/811 Capital Advance, grants etc.) is involved, use paragraphs (A) and (B) and (C) of Article 1 – Labor Standards.

### Applicability

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

**A. 1. (i) Minimum Wages.** 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 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits 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 HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the

same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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. (Approved by the Office of Management and budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

- (1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
- (2)** That each laborer or mechanic (including each

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

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

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 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 HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

**4. (i) Apprentices and Trainees. 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 Bureau

of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor 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 will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be 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 Part 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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm

ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

**3. Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime 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 subparagraph (2) of this paragraph.

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

**C.** The Contractor will be required to execute FHA Form No. 2403-A, Contractor's Prevailing Wage Certificate, as a condition precedent to insurance by the Federal Housing Administration of that certain mortgage loan, or an advance thereof, made or to be made by the mortgagee in connection with the construction of the project.

## Article 2 – Equal Employment Opportunity

The applicant hereby agrees that it will incorporate or cause to be

incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

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

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

**C.** The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**D.** The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

**G.** The Contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary of Housing and Urban Development or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**H.** The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

*Provided, That* if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

**I.** The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

**J.** The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

### **Article 3 – Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area**

(Applicable to Section 236 projects, where the estimated replacement cost of the project as determined by the Secretary of Housing and Urban Development exceeds \$500,000, and to all projects, including Section 236 regardless of estimated replacement cost, receiving rent supplement assistance under Title I, Section 101 of the Housing and Urban Development Act of 1965.)

**A.** The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary of Housing and Urban Development in which the projects located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

### **Article 4 – Health and Safety**

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

**B.** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

**C.** The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development of the Secretary of Labor shall direct as a means of enforcing such provisions.