



**Council Meeting: July 14, 2009**

**SUBJECT: Award of Sunnyvale Works! Bid No. F0805-79 for Installation of Curb Ramps, 2009 Phase 2**

**BACKGROUND**

Following a prioritized list of locations, this project installs new Americans with Disabilities Act (ADA) accessible ramps and related modifications throughout the City in order to improve pedestrian access to people of various abilities. This project uses one-time Community Development Block Grant (CDBG) Funding for FY 2009/2010 in the amount of \$265,000, made available through the federal economic stimulus program.

The project was bid as follows:

Bid Notice:           Advertised in: The Sun on May 27, 2009;  
18 bay area Builders' Exchanges;  
Onvia DemandStar, public procurement network; and  
published on the City's web site.

Bid Response:       16 contractors requested bid documents

Bid Results:         Sealed bids were publicly opened on June 24, 2009.  
7 responsive bids were received.

The lowest responsive and responsible bid was from SpenCon Construction, Inc., of Foster City in the amount of \$162,900, which is 29.48% below the engineer's estimate of \$231,000. The Bid Summary is Attachment A of this report.

Staff recommends accepting the bid from SpenCon Construction, the lowest responsive and responsible bidder.

The project is categorically exempt under CEQA Article 19 Section 15301, Class 1.c.

**FISCAL IMPACT**

The total construction cost of the project is \$265,000. This consists of the base bid of \$162,900, additive alternates totaling \$85,070, and contingency funding in the amount of \$17,030. Awarding the contract in this fashion allows 100%

use of the one-time CDBG funding. There are sufficient funds in Project 820631 for this purpose.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

### **RECOMMENDATION**

It is recommended that Council:

1. Award a contract, in substantially the same format as the attached draft and in the amount of \$247,970, to SpenCon Construction, Inc., for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met.
2. Approve a project contingency in the amount of \$17,030.

Reviewed by:

Mary J. Bradley, Director of Finance

Prepared by: Pete Gonda, Acting Purchasing Officer, Finance

Reviewed by:

Marvin Rose, Director of Public Works

Approved by:

Gary M. Luebbbers, City Manager

### **Attachments**

- A. Bid Summary
- B. Draft General Construction Contract

Attachment A

**City of Sunnyvale, California  
 Invitation for Bids No. F0805-79  
 Installation of Curb Ramps 2009 Phase 2  
 Public Works Project No. ST-09/04-09**

<i>Bidder</i>	Spencon Construction	JJR Construction, Inc	DHR Construction, Inc.	Maxicrete, Inc.	Sposeto Engineering	Joseph J. Albanese, Inc.	Guerra Construction
<i>Address</i>	350 Staysail Court Foster City, CA 94404	1120 Ninth Avenue San Mateo, CA 94402	860 Green Island Rd. American Canyon CA	1125 Missouri St. # 201 Fairfield, CA 94533	4301 Bettencourt Way Union City, CA 94587	986 Walsh Avenue Santa Clara, CA 95050	345 Commercial Street San Jose CA 95112
<b>Base Bid</b>	90 EA @ \$1,810.00	90 EA @ \$1,925.00	90 EA @ \$2,020.00	90 EA @ \$2,150.00	90 EA @ \$2,228.00	90 EA @ \$3,450.00	90 EA @ \$3,570.00
<b>Unit Price</b>							
<b>TOTAL BASE BID</b>	<b>\$162,900.00</b>	<b>\$173,250.00</b>	<b>\$181,800.00</b>	<b>\$193,500.00</b>	<b>\$200,520.00</b>	<b>\$310,500.00</b>	<b>\$321,300.00</b>
Add Alt.							
A1	\$1,810/EA \$18,100.00	\$1,925/EA \$19,250.00	\$2,020/EA \$20,200.00	\$2,150/EA \$21,500.00	\$2,228/EA \$22,280.00	\$3,400/EA \$34,000.00	\$4,900/EA \$49,000.00
A2	\$1,810/EA \$18,100.00	\$1,925/EA \$19,250.00	\$2,020/EA \$20,200.00	\$2,150/EA \$21,500.00	\$2,295/EA \$22,950.00	\$3,400/EA \$34,000.00	\$4,700/EA \$47,000.00
A3	\$1,810/EA \$18,100.00	\$1,925/EA \$19,250.00	\$2,020/EA \$20,200.00	\$2,150/EA \$21,500.00	\$2,295/EA \$22,950.00	\$3,400/EA \$34,000.00	\$4,900/EA \$49,000.00
A4	\$1,810/EA \$18,100.00	\$1,925/EA \$19,250.00	\$2,020/EA \$20,200.00	\$2,150/EA \$21,500.00	\$2,295/EA \$22,950.00	\$3,400/EA \$34,000.00	\$4,900/EA \$49,000.00
A5	\$1,810/EA \$12,670.00	\$1,925/EA \$13,475.00	\$2,020/EA \$14,140.00	\$2,150/EA \$15,050.00	\$2,295/EA \$16,065.00	\$3,400/EA \$23,800.00	\$4,200/EA \$29,400.00
A6	\$12.00/SF \$12,000.00	\$13.00/SF \$13,000.00	\$4.85/SF \$4,850.00	\$9.00/SF \$9,000.00	\$7.90/SF \$7,900.00	\$10.25/SF \$10,250.00	\$10.25/SF \$10,250.00
A7	\$50.00/LF \$15,000.00	\$50.00/LF \$15,000.00	\$26.00/LF \$7,800.00	\$45.00/LF \$13,500.00	\$46.00/LF \$13,800.00	\$60.00/LF \$18,000.00	\$42.00/LF \$12,600.00
<b>TOTAL</b>	<b>\$112,070.00</b>	<b>\$118,475.00</b>	<b>\$107,590.00</b>	<b>\$123,550.00</b>	<b>\$128,895.00</b>	<b>\$188,050.00</b>	<b>\$246,250.00</b>

## Attachment B

### DRAFT

#### GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("Owner") and SPENCON CONSTRUCTION, INC., a California corporation ("Contractor").

#### RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. **The Contract Documents.** The complete Contract consists of the following documents: Notice Inviting Bids; Instructions to Bidders; Performance Bond and Payment Bond; Guaranty; City of Sunnyvale Standard Specifications for Public Works Construction, 2006 Edition; City of Sunnyvale Standard Details for Public Works Construction, 2006 Edition; Plans and Specifications, "Installation of Curb Ramps 2009 Phase 2, Project No. ST-09/04-09, Invitation for Bids No. F0805-79", including Two (2) Addenda; OSHA, and other standards and codes as outlined in the Specifications; and CDBG Supplemental Conditions as required by HUD (Exhibit B). These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to work together so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. **The Work.** Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete the project in a good and workmanlike manner; the work of constructing concrete curb ramps, removing and reconstructing certain curbs, gutters, and sidewalks, as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared and adopted by the Owner. These Plans and Specifications are entitled respectively, Installation of Curb Ramps 2009 Phase 2, Project No. ST-09/04-09.

It is understood and agreed that tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and work performed and completed as required in the Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner, or its representatives. The Owner hereby designates as its representative for the purpose of this contract the Senior Civil Engineer for Construction or an employee of the Owner who will be designated in writing by the Director of Public Works.

**3. Contract Price.** The Owner agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of Two Hundred Forty Seven Thousand Nine Hundred Seventy and NO/100 Dollars (\$247,970.00) subject to final determination of work performed and materials furnished at unit prices per Exhibit "A" attached hereto and incorporated by this reference, and subject to additions and deductions as provided in the Documents and in accordance with Contract Documents. The contract price includes Base Bid and Additive Alternates No. A1 through A5 inclusive.

**4. Permits; Compliance with Law.** Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

**5. Inspection by Owner.** Contractor shall at all times maintain proper facilities and provide safe access for inspection by the Owner to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by Owner, be uncovered for examination at the Contractor's expense.

**6. Extra or Additional Work and Changes.** Should Owner at any time during the progress of the work request any alterations, deviations, additions or omissions from the Specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed or change be made unless in pursuance of a written order from the Director of Public Works or authorized representative, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

**7. Time for Completion.** All work under this contract shall be completed within a total maximum of sixty (60) calendar days.

If Contractor shall be delayed in the work by the acts or neglect of Owner, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, or by any cause which the Owner shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may decide.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

**8. Inspection and Testing of Materials.** Contractor shall notify Owner a sufficient time in advance of the manufacture or production of materials, to be supplied under this contract, in order that the Owner may arrange for mill or factory inspection and testing of same, if Owner requests such notice from Contractor.

**9. Termination for Breach, etc.** If Contractor should file a bankruptcy petition and/or be adjudged bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, Owner may serve written notice upon Contractor and its surety of Owner's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract, and, unless within ten days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten days, the Contract shall cease and terminate. In the event of any such termination, Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within fifteen days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty days from the date of the serving of such notice, Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to Owner for any excess cost occasioned Owner thereby, and in such event Owner may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

**10. Owner's Right to Withhold Certain Amounts and Make Application Thereof.** In addition to the amount which Owner may retain under Paragraph 21 until the final completion and acceptance of all work covered by the Contract, Owner may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. Owner may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as a payment made under the Contract by Owner to the Contractor and Owner shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

**11. Notice and Service Thereof.** All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or by first class or priority mail delivered by the United States Postal Service. Transmission of notice by facsimile or by telephone may be deemed sufficient if the requirement for written notice is waived, in writing, by the receiving party. Notices delivered in person shall be deemed communicated as of actual receipt. Notices sent by mail or courier service shall be deemed communicated as of three days after mailing or dispatch, unless that date is a date on which there is no mail or delivery service, in which case communication shall be deemed to occur the next mail service or delivery day. The burden of proof of compliance with this requirement for written notice shall be

on the sending party. All notices sent pursuant to this Contract shall be addressed as follows:

Owner: City of Sunnyvale  
Department of Public Works  
Construction Contract Administrator  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

Contractor: SpenCon Construction, Inc.  
Attn: Steve Stahl  
P.O. Box 1220  
Danville, CA 94526

**12. Assignment of Contract.** Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of Owner.

**13. Compliance with Specifications of Materials.** Whenever in the Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Specifications must be met by Contractor, unless Owner agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

**14. Contract Security.** Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

**15. Insurance.** Contractor shall not commence work under this Contract until all insurance required under this paragraph has been obtained and such insurance has been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract and particularly paragraph 16 hereof. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy. Insurance carrier shall be California-admitted.

(a) Compensation Insurance and Employer's Liability Insurance. Contractor shall take out and maintain during the life of this Contract Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.

In signing this Contract, Contractor makes the following certification, required by Section 1861 of the Labor Code:

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

(b) General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) per occurrence. Such coverage shall include, but shall not be limited to, protection against claims arising therefrom, and damage to property resulting from activities contemplated under this Contract. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the Owner and shall provide that notice must be given to Owner at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. Broad form property damage endorsement must be attached. Owner is to be named as an additional insured on any contracts of insurance under this paragraph (b). Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by Owner.

(c) Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) combined single limit coverage.

**16. Hold Harmless.** Contractor agrees to defend, save, indemnify and hold harmless Owner and all its officers, employees, and agents, against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of Owner, or of Owner's officials, agents, employees, servants, or independent contractors who are directly responsible to Owner. Contractor shall make good and reimburse Owner for any expenditures, including reasonable attorneys' fees, Owner may make by reason of such claim or litigation, and, if requested by Owner, Contractor shall defend any such suits at the sole cost and expense of Contractor.

**17. Hours of Work.** Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to Owner, fifty dollars (\$50.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code.

Contractor, and each subcontractor, shall, in accordance with California Labor Code Section 1776 or as the same may be later amended, keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with work under this agreement. Each payroll record shall contain or be verified by a written declaration under penalty of perjury, in accordance with Labor Code Section 1776(a). Such payroll records shall be made available at all reasonable times at the Contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code Section 1776. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, as well as to the Owner's representative. In the event the Contractor or a Subcontractor fails to comply in a timely manner within ten days to a written notice requesting the records, such contractor or subcontractor shall forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, in accordance with Labor Code Section 1776(g).

**18. Wage Rates.** Pursuant to the Labor Code of the State of California, or any applicable local law, Owner has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. Owner has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the City's Website at <http://sunnyvale.ca.gov/Departments/Finance/Purchasing/prevailingwage.htm>. Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against Owner.

It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that Contractor shall, as a penalty to Owner, forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

**19. Accident Prevention.** Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

**20. Contractor's Guarantee.** Owner shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly

guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to Owner within one year of the date of acceptance of completion of this Contract by Owner, Contractor will forthwith remedy such defect or defects without cost to Owner.

**21. Liquidated Damages.** Time shall be the essence of this Contract. If Contractor fails to complete, within the time fixed for such completion, the entire work mentioned and described and contracted to be done and performed, Contractor shall become liable to Owner for liquidated damages in the sum of Two Hundred Fifty and 00/100 Dollars (\$250.00), for each and every calendar day during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by Owner since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by Owner from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to Owner for any excess.

**22. Additional Provisions.**

None.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties.

CITY OF SUNNYVALE  
a Municipal Corporation, Owner

Spenco Construction, Inc.  
Contractor

License No. 820205

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_

\_\_\_\_\_  
Title

Attest:  
City Clerk

By \_\_\_\_\_

\_\_\_\_\_  
Title

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

(SEAL)

APPROVED AS TO FORM:

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

(Notice: The signatures of the Contractor's officers on this contract must be acknowledged before a notary.)

**EXHIBIT "A"**  
**SCHEDULE OF UNIT PRICES**

<u>Item No.</u>	<u>Item Description</u>	<u>Unit of Measure</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>
1	Remove curb, gutter, sidewalk or concrete on park strip; and construct perpendicular curb ramp or parallel curb ramp for non-monolithic or monolithic sidewalk per City of Sunnyvale Standard Detail13C-1 or 13C-2.  (Locations 1 through 35)	EA	90	<u>\$1,810.00</u>
<b>Total Base Bid:</b>				
<b>Total Base Bid in Words:</b>				
<b>Additive Alternate Bid</b>				
A1	Remove curb, gutter, sidewalk or concrete on park strip; and construct perpendicular curb ramp or parallel curb ramp for non-monolithic or monolithic sidewalk per City of Sunnyvale Standard Detail13C-1 or 13C-2.  (Locations 36 through 40)	EA	10	<u>\$1,810.00</u>
A2	Remove curb, gutter, sidewalk or concrete on park strip; and construct perpendicular curb ramp or parallel curb ramp for non-monolithic or monolithic sidewalk per City of Sunnyvale Standard Detail13C-1 or 13C-2.  (Locations 41,42,43 and 46)	EA	10	<u>\$1,810.00</u>
A3	Remove curb, gutter, sidewalk or concrete on park strip; and construct perpendicular curb ramp or parallel curb ramp for non-monolithic or monolithic sidewalk per City of Sunnyvale Standard Detail13C-1 or 13C-2.  (Locations 44,45,47,49 and 50)	EA	10	<u>\$1,810.00</u>
A4	Remove curb, gutter, sidewalk or concrete on park strip; and construct perpendicular curb ramp or parallel curb ramp for non-monolithic or monolithic sidewalk per City of Sunnyvale Standard Detail13C-1 or 13C-2.  (Locations 51,52,53,54 and 55)	EA	10	<u>\$1,810.00</u>

A5	Remove curb, gutter, sidewalk or concrete on park strip; and construct perpendicular curb ramp or parallel curb ramp for non-monolithic or monolithic sidewalk per City of Sunnyvale Standard Detail13C-1 or 13C-2. (Locations 48 and 56)	EA	7	<u>\$1,810.00</u>
A6	Remove and reconstruct 4" sidewalk	SF	1,000	<u>\$12.00</u>
A7	Remove and reconstruct curb and gutter	LF	300	<u>\$50.00</u>

**Note: Bid items 1 and A1 through A5 are required to have the same unit bid price.**

ACKNOWLEDGMENT

State of California )  
County of )

On \_\_\_\_\_ before me, \_\_\_\_\_  
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 the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

Signature \_\_\_\_\_

(SEAL)

The Bidder shall list the name and address of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions in Section 2-1.054, "Required Listing of Proposed Subcontractors," of the State Standard Specifications and Section 12, "Subcontractors," of the information for bidders.

**LIST OF SUBCONTRACTORS**

**Name and Address**

Breakaway  
2025 Stone Avenue  
San Jose, CA 95125

**Description of Portion  
of Work Subcontracted**

Saw Cutting

*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)*

## **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

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

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

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

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

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# **PUBLIC CONTRACT CODE**

## **Public Contract Code Section 10285.1 Statement**

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

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

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## **Public Contract Code Section 10162 Questionnaire**

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

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

Yes \_\_\_\_\_ No \_\_\_\_\_

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

## Public Contract Code 10232 Statement

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

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

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## **Noncollusion Affidavit**

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

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

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

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

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# DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

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

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

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

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

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

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

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

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

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

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

# DISCLOSURE OF LOBBYING ACTIVITIES

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

## 1. Type of Federal Action:

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

## 2. Status of Federal Action:

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

## 3. Report Type:

- a. initial
- b. material change

### For Material Change Only:

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

## 4. Name and Address of Reporting Entity

Prime

Subawardee

Tier \_\_\_\_\_, if known

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

Congressional District, if known

Congressional District, if known

## 6. Federal Department/Agency:

## 7. Federal Program Name/Description:

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

## 8. Federal Action Number, if known:

## 9. Award Amount, if known:

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

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

(attach Continuation Sheet(s) if necessary)

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

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

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

  
  
  
  
  

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

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

  

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

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

(attach Continuation Sheet(s) if necessary)

## 15. Continuation Sheet(s) attached:

Yes

No

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

Signature: \_\_\_\_\_

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

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

Telephone No.: \_\_\_\_\_ Date: \_\_\_\_\_

**Federal Use Only:**

Authorized for Local Reproduction  
Standard Form - LLL

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

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

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

16. The certifying official shall sign and date the form, print his/her name title and telephone number.

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

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

Accompanying this proposal is \_\_\_\_\_

(NOTICE: INSERT THE WORDS "CASH(\$ \_\_\_\_\_)," "CASHIER'S CHECK,"  
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent of the total of the bid.

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

## IMPORTANT NOTICE

*If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.*

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Licensed in conformance with an act providing for the registration of Contractors,

License No. \_\_\_\_\_ Classification(s) \_\_\_\_\_

**ADDENDA** -

This Proposal is submitted with respect to the changes to the contract included in addenda number/s \_\_\_\_\_

*(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)*

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: \_\_\_\_\_



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

Signature and Title of Bidder

Business Address \_\_\_\_\_

Place of Business \_\_\_\_\_

Place of Residence \_\_\_\_\_



## **SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS**

### **2-1.01 GENERAL**

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of and the submission of the bid.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out and executed. The bidder's bond form included in that book may be used.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Bid book. Signing the Bid book shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR (Code of Federal Regulations) part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

**(Use this Section for projects with Federal funds over \$100,000)**

**2-1.015--FEDERAL LOBBYING RESTRICTIONS.--**Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier sub recipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal-aid contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than Federal funds have been paid for the same purposes in connection with this Federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included in the Bid book. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Bid book. Signing the Bid book shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal Action.

**2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE).**—This project is subject to Title 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the Agency specifies a goal for Underutilized Disadvantaged Business Enterprises (UDBEs). UDBE is a firm that meets the definition of DBE and is a member of one of the following groups:

1. Black Americans
2. Native Americans
3. Asian-Pacific Americans
4. Women

References to DBEs include UDBEs, but references to UDBEs do not include all DBEs.

Make work available to UDBEs and select work parts consistent with available UDBE subcontractors and suppliers.

Meet the UDBE goal shown in the Notice to Bidders or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the UDBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

Only UDBE participation will count towards the UDBE goal. DBE participation will count towards the Agency's Annual Anticipated DBE Participation Level and the California statewide goal.

Credit for materials or supplies you purchase from UDBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a UDBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a UDBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a UDBE that is neither a manufacturer or regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a UDBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55.

#### **UDBE Commitment Submittal**

Submit UDBE information on the "Local Agency Bidder-UDBE Commitment (Construction Contracts)," Exhibit 15-G(1), form included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the UDBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the UDBE Commitment form to the Agency. UDBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the UDBE Commitment form unless the Agency requests it. If the Agency requests you to submit a UDBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each UDBE stating that it is participating in the contract. Include confirmation with the UDBE Commitment form. A copy of a UDBE's quote will serve as written confirmation that the UDBE is participating in the contract.

If you do not submit the UDBE Commitment form within the specified time, the Agency finds your bid nonresponsive.

### **Good Faith Efforts Submittal**

If you have not met the UDBE goal, complete and submit the "UDBE Information - Good Faith Efforts," Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by UDBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your UDBE Commitment form shows that you have met the UDBE goal or if you are required to submit the UDBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the UDBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to UDBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.
2. Names of certified UDBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the UDBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified UDBEs through all reasonable and available means and provide sufficient time to allow UDBEs to respond.
3. Name of selected firm and its status as a UDBE for each item of work made available. Include name, address, and telephone number of each UDBE that provided a quote and their price quote. If the firm selected for the item is not a UDBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested UDBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the UDBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the UDBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

### **5-1. SUBCONTRACTOR AND DBE RECORDS**

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on "Final Report – Utilization of Disadvantaged Business Enterprises - (DBE), First-Tier Subcontractors" (Exhibit 17-F/Form CEM-2402) and certified correct by the Contractor or his authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

### **5-1. DBE CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, "Disadvantaged Business Enterprises (DBE) Certification Status Change" Form CEM-2403(F) indicating the DBE's existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance.





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

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

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

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

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

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

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

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

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

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

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

### **5-1. PERFORMANCE OF SUBCONTRACTORS**

The subcontractors listed by you in Bid book shall list therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

UDBEs must perform work or supply materials as listed in the "Local Agency Bidder - UDBE Commitment" form specified under Section 2, "Bidding," of these special provisions. Do not terminate a UDBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the Agency.

The Agency grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed UDBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed UDBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed UDBE does not have a valid license under Contractors License Law.
4. Listed UDBE fails or refuses to perform the work or furnish the listed materials.
5. Listed UDBE's work is unsatisfactory and not in compliance with the contract.
6. Listed UDBE delays or disrupts the progress of the work.
7. Listed UDBE becomes bankrupt or insolvent.

If a listed UDBE subcontractor is terminated, you must make good faith efforts to find another UDBE subcontractor to substitute for the original UDBE. The substitute UDBE must perform at least the same amount of work as the original UDBE under the contract to the extent needed to meet the UDBE goal.

The substitute UDBE must be certified as a DBE at the time of request for substitution.

The Agency does not pay for work or material unless it is performed or supplied by the listed UDBE, unless the UDBE is terminated in accordance with this section.

### **5-1. SUBCONTRACTING**

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City/County of \_\_\_\_\_ may exercise the remedies provided under Pub Cont Code § 4110. The City/County of \_\_\_\_\_ may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

### **5-1. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS**

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

### **5-1. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS**

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

**5-1. FEDERAL REQUIREMENTS (AMERICAN RECOVERY AND REINVESTMENT ACT)**

Under the American Recovery and Reinvestment Act (ARRA) of 2009, 9 USC § 902:

**SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE.**

(a) ACCESS.—Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives are authorized—

- (1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Under ARRA of 2009, 9 USC § 1515(a):

**SEC. 1515. ACCESS OF OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES.**

(a) ACCESS.—With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized—

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

Immediately notify the Engineer if you have been contacted by the U.S. Comptroller, Inspector General, or their representatives.

JOB STAMP

**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)  
 MONTHLY EMPLOYMENT REPORT**

*See instructions that follow*

1. CONTRACT NO.	2. FEDERAL-AID PROJECT NUMBER <i>(From special provisions)</i>						
3. FIRST DAY OF REPORTING PERIOD (mm/dd/yy):	4. REPORT MONTH (mm/yy)	5. CONTRACTING AGENCY					
6. CONTRACTOR NAME AND ADDRESS							
7. EMPLOYMENT DATA							
		EMPLOYEES		HOURS		PAYROLL	
		NEW HIRES	EXISTING EMPLOYEES	NEW HIRES	EXISTING EMPLOYEES	NEW HIRES	EXISTING EMPLOYEES
PRIME CONTRACTOR DIRECT, ON-PROJECT JOBS							
SUBCONTRACTOR DIRECT, ON-PROJECT JOBS							
SUBCONTRACTOR NAME(S):		DBE					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
PRIME AND SUBCONTRACTOR SUBTOTALS							
PRIME AND SUBCONTRACTOR TOTALS (NEW + EXISTING)							
8. CERTIFIED BY CONTRACTOR: <i>(Signature and Title)</i>						DATE	
TO BE COMPLETED BY AGENCY OR AUTHORIZED REPRESENTATIVE							
9. REVIEWED BY CONTRACT ADMINISTRATOR: <i>(Signature and Title)</i>						DATE	

**COPY DISTRIBUTION:**      **Original** - Resident Engineer      **Copy** - Contractor      **Copy** - Caltrans District Local Assistance Engineer

**ADA Notice**      For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

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**CITY OF SUNNYVALE CDBG SUPPLEMENTAL CONDITIONS**

The Project to be constructed pursuant to this Contract will be financed with assistance from the City of Sunnyvale Community Development Block Grant ("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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**1. 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.

**2. 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 City and the Contractor. The complete Contract consists of the following documents: Notice Inviting Bids; Instructions to Bidders; Performance Bond and Payment Bond; Guaranty; City of Sunnyvale Standard Specifications for Public Works Construction, 2006 Edition; City of Sunnyvale Standard Details for Public Works Construction, 2006 Edition; Plans and Specifications, "Installation of Curb Ramps 2009 Phase 2, Project No. ST-09/04-09, Invitation for Bids No. F0805-79", including Two (2) Addenda; OSHA, and other standards and codes as outlined in the Specifications; and CDBG Supplemental Conditions as required by HUD. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents. The contract includes all formal changes to any of those documents by addendum, change order, or other modification.

## Exhibit B

- (B) **“Contractor”**: A person, firm or corporation with whom a Contract is entered into by the City.
- (C) **"HUD"** means the Secretary of Housing and Urban Development.
- (E) **“Project”**: Work to be performed under the Contract, 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.

### 3. 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(s) 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, subcontracts, 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 City makes final payments and all other pending matters are closed.

### 4. Equal Opportunity Provisions

- (A) **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 Contractor and all subcontractors 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:

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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) Civil Rights, HCD, and Age Discrimination Acts Assurances.** *(Applies to all Contracts and Subcontracts)*

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 and 24 CFR Part 1), Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5309 and 24 CFR Part 6), and the Age Discrimination Act of 1975, as amended (42 USC 6101-07 and 24 CFR Part 146) which prohibits discrimination on the basis of age, and all implementing regulations.

**(C) 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) Equal Employment Opportunity Clause** *(Applies to all Contracts and Subcontracts of \$10,000 or more)*

**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,

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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

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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 City, HUD 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) 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 City of Sunnyvale, as follows:

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

GOALS FOR PARTICIPATION IN EACH TRADE:		MINORITIES	WOMEN
<b>All Trades</b>	<b>County: Santa Clara County</b>	<b>19.6%</b>	<b>6.9%</b>

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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. Local California District OFCCP Offices

District Offices

Counties Served by District Office

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

**(F) 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

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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

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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.

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- 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.

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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

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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) (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):

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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.

(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

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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.
5. *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.

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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.

### 6. **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.
- (B) 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.
- (C) 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.

### 7. **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)

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- Labor,
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 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

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)

(C) State Prevailing Wage Projects

Prevailing wage rate determinations. The body awarding any Contract for public work or otherwise undertaking any public work shall cause a copy of the prevailing wage determination for each craft, classification or type of worker needed to execute the Contract to be posted at each job site. (Labor Code section 1773.2)

**8. 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 Contractor or Subcontractor from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the City 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.