

21B

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR DESIGN/BUILD GENERATOR FOR WATER TREATMENT PLANT IN KENDLETON
FOR FORT BEND COUNTY COMMUNITY DEVELOPMENT
PURSUANT TO SOQ 15-070**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and L.L. & F. Construction Management Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide Design/Build services related to a water treatment plant in Kendleton, Texas located in Fort Bend County (hereinafter "Services") pursuant to SOQ 15-070; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

- A. Contractor shall render Engineering and Construction Services associated with the design and installation of an emergency generator for the water treatment plant in the City of Kendleton. The services include, but are not limited to, preliminary engineering, design, construction documents, construction and coordination with other agencies and/or utility companies as appropriate. Contractor shall serve in the capacity of an Architect/Engineer and General Contractor and perform the tasks in accordance with Exhibit A to this Agreement.
- B. In accordance with Chapter 2258 of the Texas Government Code, all persons employed by Contractor shall be compensated at not less than the rates shown in the attached Exhibit B. Contractor shall keep detailed records of each of its workers and said records shall be made available to County for inspection at all reasonable times.

Section 2. Personnel

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

- A. Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is seventy-four thousand, five hundred dollars and 00/00 (\$74,500.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
- B. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- C. County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

- A. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of seventy-four thousand, five hundred dollars and 00/00 (\$74,500.00), specifically allocated to fully discharge any and all liabilities County may incur.

- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed seventy-four thousand, five hundred dollars and 00/00 (\$74,500.00).

Section 5. Time of Performance

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County and end no later than 175 calendar days thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default
1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its

terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

2. If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

C. Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

A. Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence

until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
5. Builders Risk Insurance: Contractor shall obtain and keep in full force and effect until the Transfer Date, Builders Risk Insurance, subject to policy terms and conditions, of direct physical loss or damage to property, materials, equipment and supplies which are to become an integral part of the Project, whether owned by Contractor, or subcontractors of every tier, and in which one or more of same has an insurable interest, while in transit, while at the Construction Site awaiting construction, during construction, and until the Transfer Date. Such insurance shall be maintained to cover, as nearly as practicable, the insurable value of such property, materials, equipment and supplies at risk, and shall contain a waiver of subrogation in favor of Contractor, Architect, subcontractors of any tier and Owner for loss or damage occurring during the Work and shall name Contractor as the named insured and Owner as additional insureds. All Builder's Risk Insurance proceeds shall be paid directly to the Contractor.

- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies

written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without sixty (60) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

Section 11. Performance and Payment Bond

Contractor shall post with County, not later than ten (10) days of the execution of this Agreement, a performance and payment bond in the amount of one hundred percent (100%) of the total lump sum price in such form as is satisfactory to County. The bond shall be executed by a corporate surety company duly authorized and admitted to do business in the State of Texas and licensed to issue such a bond in the State of Texas.

Section 12. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 13. Confidential and Proprietary Information

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of

the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.
- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 14. Independent Contractor

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 15. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: FBC Community Development Department
ATTN: Project Coordinator
301 Jackson, Ste. 602
Richmond, TX 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Contractor: L.L. & F. Construction Management Inc.
Attn: DB Lundy, Jr.
PO Box 45
El Campo, TX 77437

C. Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 16. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 17. Performance Warranty

A. Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

- B. Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 18. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 19. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 20. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 21. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 22. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 23. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services

hereunder without the express written permission of County, except where required to do so by law.

Section 24. Captions


The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 25. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 9 day of June, 2015.

FORT BEND COUNTY

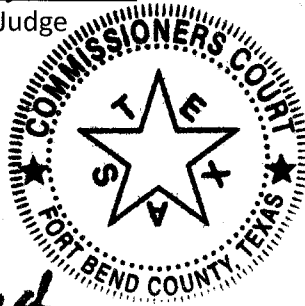


Robert E. Hebert, County Judge

ATTEST:



Laura Richard, County Clerk



L.L.&F. CONSTRUCTION MANAGEMENT INC.



Authorized Agent- Signature

D B Lundy, Jr.

Authorized Agent- Printed Name

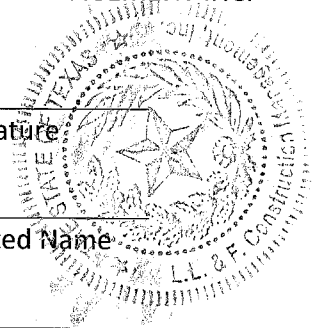
President

Title

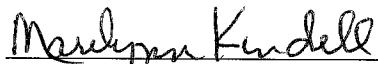
May 27, 2015

Date

Date



APPROVED:



Marilynn Kindell, Director
Fort Bend County Community Development

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Edward Sturdivant, County Auditor

EXHIBIT A

Scope of Service

L.L. & F. CONSTRUCTION MANAGEMENT, INC.

1913 WEST LOOP ~ P.O. BOX 45
EL CAMPO, TX 77437

Phone 979-578-0782 ~ Fax 979-578-0784
Email: lvsinc@sbcglobal.net

May 18, 2015

Fort Bend County Community Development Department
ATTN: Karen Bringol, Project Coordinator
Travis Annex
301 Jackson, Suite 602
Richmond, TX 77469
(Delivery by Email: Karen.Bringol@fortbendcountytexas.gov)

RE: Scope of Work for the Design/Build Generator for Water Treatment Plant in Kendleton for Fort Bend County Community Development. (SOQ 15-070).

Dear Ms. Bringol:

In regards to the Award of SOQ 15-070, L.L. & F. Construction Management, Inc. proposes the following Scope of Work for the Design/Build Generator for the Water Treatment Plant in Kendleton.

SCOPE OF WORK (Complete in place):

1. Engineering Services to include:
 - A. Determine required capacity of auxiliary generator based on existing electrical load.
 - B. Determine size of Automatic Transfer Switch.
 - C. Design Generator Foundation.
 - D. Develop Site plan indicating location of proposed auxiliary generator
2. Provide and Install 102 KW Kohler Power Systems Outdoor Diesel Generator Set. (Generator may be sized differently after engineering).
3. Provide and Install 150 AMP Automatic Transfer Switch for 102 KW generator. (Automatic Transfer Switch may be sized differently after engineering).
4. Construct Concrete Pad. (May be sized differently after engineering).
5. Miscellaneous Electrical Work.
6. Miscellaneous Items to include: Warranty, Training, Operations and Maintenance Manuals, Test runs and start up.

Page 2.

The preliminary estimate of the Project Construction Cost is as follows:

- | | |
|-------------------------------|-----------------|
| 1. Design and Engineering Fee | \$7,500 |
| 2. Construction Costs | <u>\$67,000</u> |

TOTAL: \$74,500*

***Note: Project cost based on the above Scope of Work will not exceed TOTAL.**

The Construction time is approximately 175 calendar days (25 weeks) after receipt of Notice to Proceed.

Thank you.

Sincerely,



Edward R. Polasek
Construction Manager

ERP:lks

EXHIBIT B

Chapter 2258 of the Texas Government Code Requirements

Prevailing Wages

This project is subject to the prevailing wage rate requirements of Chapter 2258 of the Government Code. The Contractor shall pay Fort Bend County sixty dollars (\$60.00) for each worker employed by the Contractor for the provision of services described herein for each calendar day or part of the day that the worker is paid less than the below stated rates. Contractors may also visit www.wdol.gov/dba.aspx.

Fort Bend County SOQ 15-070

Landscape	\$ 7.35	0.00
Mason Tender Cement	\$ 9.96	0.00
Pipelayer	\$ 10.31	0.91
PIPEFITTER	\$ 17.00	0.04
POWER EQUIPMENT OPERATOR:		
Backhoe	\$ 12.08	0.00
Bulldozer	\$ 10.44	0.00
Crane	\$ 12.67	0.45
Excavator	\$ 16.74	0.00
Front End Loader	\$ 10.68	1.42
Grader	\$ 12.20	1.48
Tractor	\$ 12.38	1.51
TRUCK DRIVER	\$ 12.28	0.98

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Fort Bend County SOQ 15-070

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

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

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

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

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

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

Exhibit IV

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO SUPERVISE PAYMENT OF EMPLOYEES

Project Name Design/Build Generator for Water Treatment Plant Date May 27, 2015
Location Kendleton Project No.

(I) (We) hereby certify that (I am) (we are) (the prime contractor) (a subcontractor) for General Construction (specify "General Construction", "Plumbing", "Roofing", etc.)

in connection with the construction of the above-mentioned Project, and that (I) (we) have appointed * Lisa Stancliff

whose signature appears below, to supervise the payment of (my) (our) employees beginning May 27, 2015; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the so-called Kick-Back Statute which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the Fort Bend County Community Development Department a new certificate appointing some other person for the purposes hereinabove stated.

* Lisa Stancliff (Identifying Signature of Appointee)

Attest (if required)

L.L. & F. Construction Management, Inc. (Name of Firm or Corporation)

(Signature)

By: [Signature] (Signature)

(Title)

President

(Title)

NOTE: This certificate must be executed by an authorized officer of a corporation, by a member of a partnership, or the sole owner, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Kick-Back Statute.

EXHIBIT VII

EMPLOYMENT AND MINORITY BUSINESS PLAN

Instructions: As specified in Parts IV and V of the HUD Specifications, all prime Contractors are required to submit a completed Plan detailing employment, as well as economic opportunities for minority and women-owned business. It is due within five (5) working days after being notified as the apparent low bidder. Failure to submit this Plan will render your bid as non-responsive.

I. Contract Information

Name of Contract: Design/Build Generator for Water Treatment Plant in Kendleton

Job Number: _____

Project Number: _____

Contract Amount: \$ 74,500

II. Contractor Information

Name of Contractor: L.L. & F. Construction Management, Inc.

Address: Physical: 1913 West Loop/Mailing: P.O. Box 45
El Campo, TX 77437

Contact Person: Lisa Stancliff

Telephone Number/FAX: 979-578-0782/979-578-0784

Contractor's Federal Tax I.D. Number: 76-0600263

Names of three (3) Corporate Officers (if applicable):

1. D B Lundy, Jr. - President
2. Peyton Lundy - V. President
3. Lisa Stancliff - Secretary

Number of Employees: 7

Fort Bend County
Employment and Minority Business Plan

III. Employment Projections

(Indicate the number of employees who will have to be hired {by job categories} for this contract, including goals for hiring within the project area, minority, and female employees.)

PROJECT GOALS				
JOB CATEGORY	Total Needed To Be Hired	Area Residents	Minorities	Women
1. Laborers	0			
2. Mechanics	0			
3. Apprentices/Trainees	0			
4. Professionals/Managers/Clerical	0			

Definitions:

1. Laborers include occupations (hourly workers) engaging in manual work requiring no special training; i.e., laborers, gardeners.
2. Mechanics include occupations requiring a high level skill, including occupations requiring a combination of basic scientific knowledge and manual skills; i.e., carpenters, electricians, cement masons, and draftsmen.
3. Apprentices/Trainees include persons engaging in a training program to learn a trade or craft.
4. Professionals/Managers/Clerical include occupations requiring the exercise of college background, policy making, and clerical work, respectively.

IV. Minority Business Projections

(Indicate the total number of subcontracts by category (i.e., plumbing, electrical, concrete, etc.) which will be needed to complete this contract, including proposed use of minority and women-owned business(es), and project area firms with estimated contract amounts.)

GOALS (Check (√) One)				
SUBCONTRACTS (By Category)	Minority	Women	Project Area	Estimated Contract Amount
1. Electrician				\$10,000
2.				
3.				
4.				
5.				
6.				
TOTALS	0	0	0	\$10,000


Fort Bend County
Employment and Minority Business Plan

For definitions of minority and women-owned businesses, including project area firms, please see Parts IV and V of the HUD Specifications.

(For those areas checked (✓) above, indicate the information requested below. Please identify the appropriate entry; i.e., subcontracts 1-6.)

Name of Subcontractor	Address	Contact	Phone Number
1. Penner Electric	1917 FM 1162	James Pierce, Owner	979-543-6659
2.			
3.			
4.			
5.			
6.			

I do declare and affirm that the contents of the foregoing are true and correct, and will furnish, upon request, documentation which will attest to its accuracy.



President/Owner

May 27, 2015

Date

EXHIBIT VIII

**Certification for Contracts, Grants, Loans
and Cooperative Agreements**

The undersigned certifies, 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 an 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 Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is 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 for 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.

Executed this 27th date of May, 2015.

By DBL
(signature)
D B Lundy, Jr.
(typed or printed name)
President
(title, if any)

Covered Action: COMMUNITY DEVELOPMENT BLOCK GRANT
(type and identity of program, project or activity)

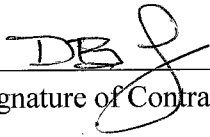
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
OTHER RESPONSIBILITY MATTER FOR PRIMARY COVERED TRANSACTIONS**

L.L. & F. Construction Management, Inc.

NAME OF CONTRACTOR

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



Signature of Contractor

May 27, 2015

Date

EXHIBIT X

FORT BEND COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

SUBCONTRACTOR PROFILE

Project Name: Design/Build Generator for Water Treatment Plant in Kendleton

Name of Contractor: L.L. & F. Construction Management, Inc.

Name of Subcontractor: Penner Electric, Inc.

Federal Tax I.D. Number: 76-04055826

Type of Business: () Sole Proprietor () Partnership () Corporation

Name(s) of Principle Owner(s): James Pierce

Address: 1917 FM 1162
El Campo, TX 77437

Phone: 979-543-6659 FAX: EMAIL: penner.electric@yahoo.com

Estimated Amount of Contract: \$10,000

Type of Contract: () Construction () Supply Service

Woman-owned () Yes No Minority-Owned () Yes No

Race of Head of Household:

- | | |
|---|--|
| <input checked="" type="checkbox"/> White | <input type="checkbox"/> Black/African American |
| <input type="checkbox"/> Asian | <input type="checkbox"/> American Indian/Alaska Native |
| <input type="checkbox"/> Native Hawaiian/Other Pacific Islander | <input type="checkbox"/> Asian and White |
| <input type="checkbox"/> Black/African American and White | <input type="checkbox"/> American Indian/Alaska Native and White |
| <input type="checkbox"/> American Indian/Alaska Native and Black/African American | <input type="checkbox"/> Other Multi Racial |

Ethnicity of Head of Household:

- Hispanic – A person of Mexican, Cuban, Puerto Rican, South or Central American, or other Spanish culture or Origin, regardless of race. Terms such as “Latino” or “Spanish Origin” apply to this category.**
- Non-Hispanic – A person not of Mexican, Cuban, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race**

Date: May 27, 2015

For Office Use Only
Minority Verification

Publication/Source

Contractor Eligibility Verification

Publication/Source

Exhibit XI

CONTRACTOR'S LOCAL OPPORTUNITY PLAN

L.L. & F. Construction Management, Inc. agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the (City/County) of Kendleton, Fort Bend County.

- A. To ascertain from the Grant Recipient's CDBG program official the exact boundaries of the project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the city the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within and servicing the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this plan in all bid documents and to require all bidders on subcontracts to submit an affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To insure that subcontracts (greater than \$10,000), which are typically let on a negotiated rather than a bid basis in areas other than the covered project area, are also let on a negotiated basis, whenever feasible, in a covered project area.
- F. To formally contact unions, subcontractors, and trade associations to secure their cooperation in this effort.
- G. To insure that all appropriate project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this plan.
- J. To maintain records concerning the amount and number of contracts, subcontracts, and purchases which contribute to objectives.
- K. To maintain records of all projected work force needs for all phases of the project by occupation, trade, skill level, and number of positions and to update these projections based on the extent to which hiring meets these Local Opportunity objectives.

As officers and representatives of L.L. & F. Construction Management, Inc., we the undersigned have read and fully agree to this Plan, and become a party to the full implementation of the program and its provisions.



Signature

President
Title

May 27, 2015

Date

24 CFR part 135

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

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

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

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

SECTION 504 CERTIFICATION

Exhibit XIII

**POLICY OF NONDISCRIMINATION ON THE BASIS
OF DISABILITY**

The General Contractor does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

(Name) L.L. & F. Construction Management, Inc.

(Address) P. O. Box 45

El Campo TX 77437
City State Zip

Telephone Number (979) 578 - 0782 Voice
(979) 578 - 0784 ~~FDD~~ Fax

has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's (HUD) regulations implementing Section 504 (24 CFR Part 8. dated June 2, 1988).

SOLICITATION PROVISIONS

Grantees soliciting bids or requesting proposals for contracts for the construction, alteration, or repair of any public building or public work project subject to the prohibitions described in this notice shall include in their solicitations the following provisions:

Restrictions on Public Buildings and Public Works Projects Certification

- A. Definitions. The definitions pertaining to this provision are those that are set forth in the clause entitled "Restrictions on Public Works Projects." (Set out under "Contract Clauses" below.)
- B. Certification. Except as provided in paragraph (C) of this provision, by submission of its bid or proposal, the offeror certifies that it -
 - 1. Is not a Contractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) (see paragraph (H) of this provision);
 - 2. Has not or will not enter into any subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR, and
 - 3. Will not provide any product of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.
- C. Inability to certify. An offeror unable to certify in accordance with paragraph (B) of this provision shall submit with its offer a written explanation fully describing the reasons for its inability to make the certification.
- D. Applicability of 18 U.S.C. 1001. The certification in paragraph (B) of this provision concerns a matter within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 U.S. C. 1001.
- E. Notice. The offeror shall provide immediate written notice to the Contracting Officer, if at any time before the contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- F. Restrictions on Contract Award. Unless a waiver to these restrictions is granted by the Secretary of Housing and Urban Development, no contract will be awarded to an offeror (1) who is owned or controlled by a citizen or national of a foreign

country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, (2) whose subcontractors are owned or controlled by citizens or nationals of a foreign country on the USTR list or, (3) who incorporates any product of a foreign country on the USTR list in the public works project.

- G. Recordkeeping. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (B) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- H. USTR List. The USTR published an initial list in the Federal Register on December 30, 1987 (53 FR 49244), which identified one country - Japan. The USTR can add countries to the list, and remove countries from it, in accordance with Section 109 (C) of PUB. L. 100-202.

CONTRACT CLAUSES

Grantees or subgrantee recipients entering into contracts for construction, alteration, or repair of any public building or public work project subject to the prohibitions described in this notice shall include the following provisions in all such contracts:

Restrictions on Public Buildings and Public Works Projects

- A. Definitions. "component", as used in this clause, means those articles, materials, and supplies incorporated directly into the product. "Contractor or subcontractor of a foreign country", as used in this clause, means any Contractor or subcontractor that is a citizen or national of a foreign country or is controlled directly or indirectly by citizens or nationals of a foreign country. A Contractor or subcontractor shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country -
1. If 50 percent (50%) or more of the Contractor or subcontractor is owned by a citizen or a national of the foreign country;
 2. If the title to 50 percent (50%) or more of the stock of the Contractor or subcontractor is held subject to trust or fiduciary obligation in favor of citizens or nationals of the foreign country;
 3. If 50 percent (50%) or more of the voting power in the Contractor or subcontractor is vested in or exercisable on behalf of a citizen or national of the foreign country;

4. In the case of a partnership, if any general partner is a citizen of the foreign country;
 5. In the case of a corporation, if its president or other chief executive officer or the chairman of its board of directors is a citizen of the foreign country or the majority of any number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or
 6. In the case of a contractor or subcontractor who is a joint venture, if any participant firm is a citizen or national of a foreign country or meets any of the criteria in subparagraphs (A) (1) through (5) of this clause. "Product", as used in this clause, means construction materials; i.e., articles, materials and supplies brought to the construction site for incorporation into the public works project, including permanently affixed equipment, instruments, utilities, electronic or other devices, but not including vehicles or construction equipment. In determining the origin of a product, (insert name of grantee), will consider a product as produced in a foreign country if it has been assembled or manufactured in the foreign country, or if the cost of the components mined, produced, or manufactured in the foreign country exceed 50 percent (50%) of the cost of all its components.
- B. Restrictions. The Contractor shall not (1) knowingly enter into any subcontract under this contract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (see paragraph (C) of this clause), or (2) supply any product under this contract of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.
- C. USTR List. The USTR published an initial list in the Federal Register on December 30, 1987 (53 FR 49244), which identified one country - Japan. The USTR can add other countries to the list, or remove countries from it, in accordance with Section 109 (C) of PUB. L. 100-202.
- D. Certification. The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, unless such Contractor has knowledge that the certification is erroneous.

- E. Subcontracts. The Contractor shall incorporate this clause, modified only for the purpose of properly identifying the parties, in all subcontracts. This paragraph (E) shall also be incorporated in all subcontracts.

SPECIAL FEDERAL PROVISIONS

1. Contractors will maintain all records pertaining to the project for three (3) years after receiving final payment and after all other pending matters have been closed.
2. Contractors securing a contract in excess of \$100,000 will not expend such funds by making use of subcontracting with facilities included on the Environmental Protection Agency List of Violating Facilities as per Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations 40 CFR 15.

CDBG gen\contractor forms\Solicitation Provisions

HUD SPECIFICATIONS

PART I

Civil Rights

Title VI of the Civil Rights Act of 1964, as well as, Section 109 of the Community Development Act of 1974, require that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to these Acts. For purposes of this Part "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or private Contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. A Contractor may not, under any program or activity to which the regulations of this Part may apply directly or through contractual or other arrangements, on the grounds of race, color, national origin, or sex:

- (1) Deny any facilities, services, financial aid or other benefits provided under the program or activity;
- (2) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form from that provided to others under the program or activity;
- (3) Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity;
- (4) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
- (5) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to provided any facilities, services or other benefit provided under the program or activity; and
- (6) Deny an opportunity to participate in a program or activity as an employee.

PART II

Equal Employment Opportunity Clause

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicapped condition. 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, national origin, age, or handicapped condition; such action shall include, but not 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 of 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 considerations for employment without regard to race, color, religion, sex, national origin, age, or handicapped condition.
- (3) The Contractor will send to each labor union or representative of workers with which he or she 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 of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports including, but not limited to the Fort Bend County Community Development Department Quarterly Employment Data Report required by Executive Order 11246 of September 24, 1965, and by rules regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the administering agency (See EXHIBIT I).
- (6) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

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

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

PART III

Affirmative Action

Standard Federal Equal Employment Opportunity Construction Contract Specifications
(Executive Order 11246)

- (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 Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participated 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 \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- (3) If the Contractor is participating (pursuant to 41 CFR 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 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 p of these specifications. The goal 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. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- (5) Neither the provisions of any collective bargaining agreement, nor 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, or the regulations promulgated pursuant thereto.

- (6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and 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 the 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 individual. If such individual was sent to the union hiring hall for referral as 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 therefor, 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 7b 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 employee at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female 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 month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 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 work force.

- 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 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 toilet 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 Contractors and suppliers, including circulation of solicitations to minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- (8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). 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 p 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 work force participation, makes 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 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, 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 goal 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 opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (14) The Contractor shall designate a responsible official to monitor all employment related activity o ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- (15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Notice of Requirements for Affirmative Action To Ensure Equal Employment Opportunity
(Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate world in each trade on all construction work in the covered area, are as follows:

TIMETABLES

Goals for Minority Participation
for each Trade: 27.3%

Goals for Female Participation
for each Trade: 6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. 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 60-4.3(a), and its efforts to meet goals. 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 regulation 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 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for 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 Subcontractor; estimated dollar amount of the subcontract; estimated starting date of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is Fort Bend County, Texas.

(43 CFR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65977, Oct. 3, 1980)

PART IV

Employment Opportunities for Businesses and Lower Income Persons

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts of work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
2. The parties to this contract will comply with provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Contractor will send to each labor organization or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the U.S. Department of Housing and Urban Development issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance, provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

Further, each Contractor or Subcontractor undertaking work on a Section 3 covered project shall assure that to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the Section 3 covered project area or business concerns owned in substantial part by persons residing in the Section 3 covered area, in accordance with 24 CFR Part 135.

All prime Contractors shall submit their Employment and Minority Business Plan for approval by the Fort Bend County Community Development Department (See Exhibit VII).

PART V

Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

It is national policy to award a fair share of contracts to small and minority business firms, as well as women-owned firms. Accordingly, affirmative steps must be taken by Contractors to assure that small, minority, or women-owned businesses are utilized when possible as sources of supplies, equipment, construction and services, especially from labor surplus areas. Affirmative steps shall include taking the following good faith efforts:

A. Good Faith Efforts

- (1) Including qualified small, minority, women-owned businesses on solicitation lists;
- (2) Assuring that small, minority, or women-owned businesses are solicited whenever they are potential sources;
- (3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority, or women-owned businesses participation;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, minority, or women-owned businesses;
- (5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration; and also including, but not limited to, the Houston Citizen's Chamber of Commerce, Houston Hispanic Chamber of Commerce, Minority Contractor's Association of Houston, and the Houston Business Council;

- (6) Advertising in a general circulation or minority focus media concerning contracting opportunities;
- (7) Providing adequate information about plans, specifications, and requirements;
- (8) Assisting with bonding, lines of credit, or insurance as required by the contract; and
- (9) If any subcontracts are to be let, the Contractor will include the provisions of paragraphs (1) through (9) in every subcontract or purchase order.

B. Minority Business Definition

For purposes of these requirements, a minority business enterprise represents a firm owned and controlled by one or more minorities or women (51% or more), and meet the following criteria:

- (1) Minority groups members who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and any other minorities or individuals found to be disadvantaged by the Small Business Administration (SBA);
- (2) Must be an independent business;
- (3) Ownership and control by minorities or women shall be real, substantial, and continuing and shall go beyond proforma ownership of the term as reflected in its ownership documents; and
- (4) Must be a small business as defined by SBA.

C. Submission Requirements

- (1) Contractors are required to submit a completed Employment and Minority Business Plan form (See Exhibit VII); and
- (2) Contractors are also required to submit, when necessary, all pertinent information related to minority or women-owned business, including but not limited to ownership documents, business references, stock certificates, and other pertinent documents.

PART VI

Federal Labor Standards Provisions
(Reprint from U.S. Department of Housing and Urban Development
Publication HUD-4010 (2-84) (HB 1344.1))

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

- A. 1. (i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also regular contributions made or costs incurred for more than a weekly period (but less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

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

- (ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate) a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C., 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designees within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).
- (c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator, for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work on the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control Number 1215-0140.)

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

3. (i) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development to the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of their registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)
- (ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee of the agency is a party to the contract, but if the agency is not such a party to the contract, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall be set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

4. (i) **Apprentices and trainees.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate as specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by

formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contract will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (iv) **Helpers.** Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in §5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two (2) helpers for every three (3) journeymen (In other words, not more than forty (40) percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work employed on the job site.) Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's where appropriate) wage rate on the wage determination for the work actually performed.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may, by appropriate instructions, require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.
7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contract (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.
10.
 - (i) **Certification of eligibility.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
 - (iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

B. **Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such a workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph 1 of this event of this section, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for the liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph 1 of this section, in the sum of ten (10) dollars for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section.
3. **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

