



**CITY OF SOLVANG
1644 Oak Street
Solvang, CA 93463**

Request for Proposals

**CDBG Accessibility Improvements
Design-Build Project
Project No. PW 006**

Released: January 5, 2012

Proposal Deadline: 2 PM, Tuesday, January 31, 2012

NOTICE OF REQUEST FOR PROPOSALS

CDGB Accessibility Improvements Design-Build Project Project No. PW 006

1. CITY OF SOLVANG (hereinafter "CITY") is soliciting proposals for the CDBG Accessibility Improvements Design-Build Project, City Project No. PW 006 (hereinafter "Project"), and will receive proposals in the office of the City Clerk, 1644 Oak Street, Solvang, California, up to the hour of **2:00 PM, Tuesday, January 31, 2012.**
2. **A non-mandatory pre-bid job walk** will begin at 1644 Oak Street, at the City of Solvang City Hall, at **2:00 PM, Tuesday, January 24, 2012.** Bidders are urged to attend. We will visit the sites described in the Request for Proposals.
3. The services to be performed by the successful proposer are described in the Request for Proposals in the Project Scope of Work section below. Copies of the Request for Proposals are available from the CITY at:

Attention: Frank Saunders, Engineering Technician
Public Works Department
411 Second Street
Solvang, CA 93463
(805) 688-5575

Or online at:

http://www.cityofsolvang.com/index.php/permit-center/document-center/cat_view/68-public-works-documents/72-current-public-works-rfpsrfgsbid-packages

If you download the documents please send an email to franks@cityofsolvang.com to be added to the plan holders list and to receive addenda.

4. The Project includes the design and construction/installation of improved handicap accessibility doors to the City Hall rear entry and the City Annex Building main entry, and public counter improvements for the Parks & Recreation Department reception area.
5. All responsive proposals shall be reviewed and evaluated by the CITY in order to determine which proposer best meets the CITY's needs for this Project. The criteria by which the CITY shall evaluate proposals are set forth in the Request for Proposals.
6. The CITY reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process.

Brad Vidro, City Manager

Date

REQUEST FOR PROPOSALS

CDGB Accessibility Improvements Design-Build Project Project No. PW 006

1. **BACKGROUND INFORMATION.** The City of Solvang operates out of multiple buildings. The age of the buildings varies, and modifications and upgrades to the buildings over the years have also varied particularly with respect to accessibility. Restrictive budgets have not allowed complete upgrades to be accomplished in all areas at any one time. The availability of the Santa Barbara County CDBG Capitol Project Grant allowed the City of Solvang to apply for funding to accomplish some of the much-needed ADA upgrades throughout multiple critical areas at City public facilities and offices.
2. **DELIVERY OF PROPOSALS.** It is the Proposer's responsibility to ensure that the proposal is received by the City prior to the hour and date for the opening of proposals specified in the Notice of Request for Proposals. Any proposals received by the City after that hour and date shall be rejected and returned unopened.
3. **FORMAT OF PROPOSALS.** All proposals shall be typewritten or printed in ink clearly and legibly, in conformance with the Request for Proposals and submitted in an envelope plainly marked on the outside: "**PROPOSAL FOR CDBG ACCESSIBILITY IMPROVEMENTS DESIGN-BUILD PROJECT, CITY PROJECT NO. PW 006 .**" Three copies of the proposal are required.
4. **QUALITY OF PROPOSAL.** Unnecessarily elaborate or glossy proposals are neither expected nor desired. The emphasis of the proposal should be on responding to the requirements set forth in this Request for Proposals.
5. **CONTENTS OF PROPOSAL.** The proposer shall include in its proposal, at a minimum, the following information presented in a clear and concise format, in order to demonstrate the Proposer's related experience, competence and professional qualifications for the satisfactory performance of the services outlined in the Project "Scope of Work" section of this Request for Proposals.
 - 5.1. A list of the most recent projects for which the Proposer Project Team has performed services of similar size, scope, and complexity. This list shall include the name, contact person, address, and phone number of each party for whom the service was provided, as well as a description of the service performed and the dollar amount of the contract, and the date of performance.
 - 5.2. A list of the Proposer's principals, employees, agents, and subconsultants (project team) which the proposer anticipates assigning to this Project. This list shall include a summary of the qualifications, licenses, and experience of each individual; the approximate number of hours each will devote to the PROJECT; and the type of work to be performed by each individual. The CITY will retain under its Agreement with the successful Proposer the right of approval of all persons performing under the Agreement.

5.3. A detailed description of the methods by which the Proposer intends to perform the work set forth in the Scope of Work. The description shall include, at a minimum, the following items:

5.3.1. A work plan including a performance and cost schedule for all services necessary to complete this Project. The proposal shall specify the major components, the cost breakdown by major component or phase, and the expected time of completion for each component based on the scope of services outlined in the proposal.

5.3.2. A total proposed "Not to Exceed" cost of the services, including a Fee Schedule describing all charges and hourly rates for services.

5.3.3. Proposed terms for an Agreement by which the work shall be performed. The CITY's standard short form contract is attached to this Request for Proposals (see attachment 1). The Proposer should specifically indicate, in its proposal, any clauses in the CITY's proposed Agreement which are unacceptable to the proposer and may suggest alternatives. However, this may result in the bid being considered non-responsive if the proposed alternatives are not acceptable to the City.

5.4. A statement which discloses any past ongoing or potential conflicts of interest which the Proposer may have as a result of performing the work for this Project.

5.5. A copy of an insurance certificate or a letter of intent to provide insurance from the issuing company (including a description of types of coverage and dollar amount limits) may be favorably considered. Minimum insurance requirements are as follows: General Liability - one million per occurrence; Automobile – one million per accident; Workers Compensation and Employer's Liability – one million per accident; and Professional Liability or Errors and Omissions Insurance one million per claim and in the aggregate.

5.6. The Proposal must be signed by an authorized representative of the Proposer.

5.7. The proposal must be accompanied by proper documentation of valid California contractor's license(s) necessary to complete the project.

6. **INTERPRETATIONS OF THE REQUEST FOR PROPOSALS.** If the Proposer is in doubt as to the meaning of any part of the Request for Proposals, or finds discrepancies in or omissions from the Request for Proposals, the Proposer shall submit to the CITY a written request for an interpretation or clarification a minimum of 48 hours prior to the time for opening proposals. All such requests should be addressed to the CITY at:

Public Works Department
411 Second Street, Solvang, CA 93463
Attn: Frank Saunders

Or via email to franks@cityofsolvang.com

The CITY shall not be responsible for any explanation or interpretations of the Request for Proposals other than by written addendum delivered to each Proposer. No oral

interpretations of any provision in the Request for Proposals shall be binding upon the CITY.

7. **REVIEW OF PROPOSALS.** After the Proposals are received and opened by the CITY, the CITY shall review and evaluate all proposals for responsiveness to the Request for Proposals in order to determine whether the Proposer possesses the professional qualifications necessary for the satisfactory performance of the services required. The CITY shall also investigate qualifications of all proposers to whom the award is contemplated, and the CITY may request clarifications of proposals directly from one or more proposers. It is anticipated that this review period will last up to approximately thirty (30) days. In reviewing the proposals, the CITY may consider the following:
 - 7.1. The Proposer's understanding of the proposed project and familiarity with the Project buildings. This includes demonstrating an understanding and familiarity with the types of problems encountered on similar projects.
 - 7.2. The experience and past performance of the Proposer and its agents, employees, and subconsultants (project team) in completing projects of similar type, size and complexity. The CITY may consider Proposer's timely and accurate completion of similar projects within budget.
 - 7.3. The feasibility of the proposal based upon the performance, delivery schedules and the methodology to be used by the Proposer. This includes a demonstration of the dedication of resources to undertake and complete the Scope of Work within a reasonable time and within budget.
 - 7.4. The Proposer's responsiveness to the Request for Proposals, and clarity and creativity in their proposal.
8. **AWARD OF AGREEMENT.** Upon completion of the review period, the CITY shall notify the Proposer selected for the Project. The Proposer so notified may be required to provide specific documentation to the CITY. Any delay caused by Proposer's failure to respond to direction from the CITY may lead to a rejection of the Proposal.
 - 8.1. If the CITY decides, after evaluation and negotiation, to award the Agreement, a standard short form contract shall be sent to the successful Proposer (Contractor) for the Proposer's signature. No proposal shall be binding upon the CITY until after the Agreement is signed by duly authorized representatives of both the Proposer and the CITY.
 - 8.2. The CITY reserves the right to reject any or all proposals, and to waive any irregularities.
 - 8.3. The successful Proposer will be required to obtain a City of Solvang Business Certificate.
 - 8.4. The successful Proposer will be required to submit a Performance Bond in the amount of 100% of the contract amount, and a Payment Bond in the amount of 100% of the contract amount.
 - 8.5. The successful Proposer will be required to submit a Maintenance Bond in the amount of 50% of the contract amount to remain in full force and effect for a period of one year from the date of Notice of Completion.

9. **SCOPE OF SERVICES.** The Scope of Work set forth in this Request for Proposals represents an outline of the services which the CITY anticipates the successful proposer to perform, and is presented for the primary purpose of allowing the CITY to compare proposals. The precise scope of services to be incorporated into the Design-Build Agreement shall be negotiated between the CITY and the successful Proposer. The Proposer is encouraged to suggest any changes to the scope of services (as a part of the proposal) in order to achieve the CITY's stated Project objectives.

9.1. **PROJECT Objectives.** The CITY's primary objective for this Request for Proposals is to obtain professional and construction services to complete in a timely and cost effective manner the design and installation of the City of Solvang CGBG Accessibility Improvements Design-Build Project. The detailed Project Scope of Work is attached.

Request for Proposals

**CDGB Accessibility Improvements
Design-Build Project
Project No. PW 006**

Project Scope of Work

City of Solvang
CDBG Accessibility Improvements
Design-Build Project
At City Hall and Annex Building
Project No. PW 006

SCOPE OF WORK

Introduction and General Project Description

The City of Solvang Public Works Department is in need of upgrading the existing City Hall rear entryway, the Annex Building entrance, and the Parks & Recreation Department reception counter to current ADA and California Building Code standards and specifications. The City desires these improvements to offer greater access to its facilities while providing better weatherization and energy efficiency qualities.

Currently the City Hall at 1644 Oak Street has ADA access at the rear of the building at the main double door entrance with European Style doors with a transom window above. The City would like to replace these doors with new ADA compliant doors with an automated or switch activated electric door opener.

The Annex Building at 411 Second Street has a tall vertical double door entrance with an arched transom window above. The City would also like to replace these doors with new ADA compliant doors with an automated or switch activated electric door opener. The tall doors shall be replaced with standard height commercial doors and a second transom window to fit above the new doors and below the existing arched transom window.

Also inside the Annex Building, the Parks & Recreation Department has a reception counter with swinging door. The City would like to replace the Parks & Recreation Department reception counter and swinging access door with ADA compliant furnishings by Pleion (or approved equal) that match existing City equipment found in the Planning/Public Works offices. The City would also like to provide adequate electrical and phone service, and computer cabling for the new counter with modifications to the existing wiring as required.

Applicable Codes and Regulations: ADA Regulations, California Building Code, and California Electrical Code.

Phase 1 - Design Services (60 Calendar Days)

1. Meetings and Coordination. The Contractor's project manager and other appropriate staff/subconsultants shall attend a project kick-off meeting and progress meetings throughout the

course of the project as recommended by the Contractor and requested by the City. The Contractor shall provide project oversight, coordination and required permits (no-fee through City Building Division) as necessary for prompt and successful completion of the Contract design and construction services.

2. Conceptual Alternatives. Contractor shall work closely with the City Planning and Public Works staff to develop improvement concepts and prepare a minimum of three conceptual designs for each of the entryways with desired upgrades that are architecturally compatible with the existing and surrounding buildings. New doors for both locations shall be: Marvin, Clad Commercial Doors (Double Doors), Std. Pine 2-1/4" Panels, Std. 6" head rail, intermediate rail, and stiles with 11-3/8" bottom rail, wood factory primed, tinted glass, Std. stainless steel kick plate, interior Panic Bar opening hardware, exterior pull handles, secondary door head and foot bolts (left side), keyed entry to match existing, and 1/4" saddle sill; or approved equal. Matching transom windows shall be provided for Annex Building. Automatic door operators shall be: Horton HD-Swing LE Series 4000LE door operators with push plate actuators; or approved equal.

3. Plans and Specifications. Contractor shall prepare construction drawings including elevation views and details of accepted design, electrical drawings, and other drawings as applicable in accordance with the City Codes, standards and specifications, California Building Code, and other applicable standards. Three sets of design plans (drawings) and specifications shall be submitted at the 70% and 100% level of completion for city review and comment. **Contractor shall allow 7 days for City review and comments following both the 70% and 100% submittals.** Plans shall be prepared on 11 x 17 sheets. After approval of the 100% plans and specifications, seven final sets shall be submitted for City use along with electronic copies in AutoCAD and Word format.

Phase 2 - Construction Services (30 Calendar Days)

1. Permits, Scheduling, and Coordination. Contractor shall obtain a no-fee building permit through the City and coordinate the construction schedule with the City and the City's IT consultant. Contractor shall propose construction hours and days of construction for City approval. Contractor shall provide appropriate notifications to occupants and City Building Inspector before beginning the removal of existing materials or other construction activities.

Phase 2 – Construction Services shall commence no later than 14 Calendar Days following completion of Phase 1.

2. Demolition. Contractor shall remove and dispose of existing doors, framing and other materials as necessary to accommodate new installations. Contractor shall move the existing counter and cabinets in the Parks & Recreation Department office to another area of the office as directed by the City. During demolition, Contractor shall implement dust control measures as approved by the City.

3. Door Installation. Contractor shall construct structural work and framing, and install new doors and windows. Contractor shall perform appurtenant work as required for complete and properly functioning door systems.

4. Electrical Installation. Contractor shall modify existing electrical panels as necessary, and install new electrical conduit, wiring, switches, motors, devices, etc. for complete, code compliant, operable systems. Contractor shall complete all electrical work for new automated doors per approved electrical design. Contractor shall complete all electrical work to provide adequate electrical and phone service, and computer cabling for the new counter with modifications to the existing wiring as required per approved electrical design. Electrical installation shall include ADA compliant pedestal mounted door switches. Contractor shall perform appurtenant work as required for complete and properly functioning electrical systems.

5. Exterior and Interior Finishing. Contractor shall replace any wall materials and finishes removed to accommodate new doorways, where needed, with appropriate City approved materials. Contractor shall perform drywall and plaster work as necessary, and paint affected areas to match existing. Primer and finish coats shall be applied with colors as approved by the City. Contractor shall perform appurtenant work as required for complete installation.

6. Record Drawings. (Record drawings may be submitted after the 30 Calendar Day construction period.) The contractor shall provide record drawings upon completion of the project construction. Changes and modifications incorporated into the constructed work shall be recorded by the contractor and City Building Inspector. Contractor shall prepare and submit to the City draft Record Drawings incorporating the red-line comments. Following the City's review, final Record Drawings shall be submitted to the City. The Contractor shall provide two sets of prints, and the electronic files in both PDF and AutoCAD format for all drawings.

Request for Proposals

**CDGB Accessibility Improvements
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Proposed Design-Build Agreement

CITY OF SOLVANG
DESIGN-BUILD AGREEMENT

This Agreement is made and entered into this _____ Day of _____, 2012, by and between the City of Solvang (CITY),

| | |
|-------------------------------------|---|
| Whose facility is: | Solvang City Hall, and Annex Building |
| Whose Responsible Administrator is: | Brad Vidro, City Manager |
| Whose Representative is: | Matt van der Linden, Public Works Director |
| Whose address for notices is: | City of Solvang Public Works Director, Matt van der Linden 411 Second Street Solvang, CA 93463 |
| And | |
| DESIGN-BUILDER: | [Contractor's Name] |
| Whose Responsible Administrator is: | [Name of Contractor's Administrator] |
| Whose address for notices is: | [Contractor's Address] |
| For the Project: | CDBG Accessibility Improvements Design-Build Project, City Project No. PW 006 |

CITY and DESIGN-BUILDER hereby agree as follows:

ARTICLE 1 WORK

DESIGN-BUILDER shall provide all work required by the Contract Documents (the “Work”). DESIGN-BUILDER agrees to do additional Work arising from changes ordered by the CITY pursuant to Article 7 of the General Conditions. The Work will be performed in Phases identified as follows:

Phase 1 - Design.

Phase 2 - Construction.

ARTICLE 2 OPTIONS

The CITY may exercise its option for performance of the Work under Phase 2 by providing a written Notice to Proceed to the DESIGN-BUILDER for performance of Phase 2. The Option for Phase 2 may be exercised not later than 30 days after the expiration of Phase 1 Time or the acceptance by the CITY of the Design Documents under Phase 1, whichever is later. If DESIGN-BUILDER has complied with all other terms of the Contract and the CITY fails to exercise its Option for Phase 2 by such calculated date, the DESIGN-BUILDER agrees that a time extension will be its sole and complete remedy for any damage or loss incurred as a result of the delay in exercising said Option for Phase 2.

The CITY’s “OPTIONS” rights under this Article 2 are independent of the “Termination for Convenience” rights as set forth in Article 13. As such, if the CITY opts to not proceed with Phase 2 after the completion of Phase 1, DESIGN-BUILDER’s right of recovery is limited to the Contract Sum for Phase 1.

The CITY retains the right to terminate this Contract for convenience at any time in accordance with Article 13 of the General Conditions.

ARTICLE 3 CONTRACT DOCUMENTS

“Contract Documents” means the Price Proposal Form, Preliminary Schedule, Bid Bond, DESIGN-BUILDER’s Proposal, Notice of Award, this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion, Performance Bond, Payment Bond, Maintenance Bond, and all other documents identified in this Agreement of which together form the contract between CITY and DESIGN-BUILDER for the Work (the “Contract”). The Contract constitutes the complete Agreement between the CITY and DESIGN-BUILDER and supersedes any previous agreements or understandings.

ARTICLE 4 CONTRACT SUM

Subject to the provisions of the Contract Documents CITY shall pay to DESIGN-BUILDER, for the performance of the Work, \$NNN, for Phase 1 Design. The CITY shall pay to DESIGN-BUILDER, for the performance of the Work for Phase 2, if the option for Phase 2 is exercised, \$NNN.

ARTICLE 5 INDEMNIFICATION

To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) DESIGN-BUILDER shall indemnify, defend and hold harmless the CITY and its officers, elected and appointed officials, employees and volunteers ("CITY entities") from and against all claims, damages, injuries, losses and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of DESIGN-BUILDER, any subconsultant, anyone employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the sole negligence, active negligence or willful misconduct of the CITY. Negligence, recklessness or willful misconduct of any subcontractor employed by DESIGN-BUILDER shall be conclusively deemed to be the negligence, recklessness or willful misconduct of DESIGN-BUILDER unless adequately corrected by DESIGN-BUILDER. The provisions of this Section 5 shall survive completion of DESIGN-BUILDER's services or the termination of this Agreement.

See also Article 14 for County of Santa Barbara indemnification requirements.

ARTICLE 6 INSURANCE REQUIREMENTS

Without limiting DESIGN-BUILDER's responsibility to defend and indemnify CITY, it is agreed that DESIGN-BUILDER shall maintain in full force and effect, at all times during the performance of this Agreement, the following policy or policies of insurance covering its operations:

(a) Comprehensive General Liability, including contractual liability, business automobile liability, broad form property damage, and products and completed operations, all of which shall include coverage for both bodily injury and property damage, with a combined single limit of one million dollars (\$1,000,000) per occurrence. DESIGN-BUILDER's comprehensive general liability insurance policy shall contain language substantially similar to the following clauses:

(1) "The City of Solvang, its elected and appointed officials, officers, employees and agents are named as additional insured as respects operations of the named insured performed under contract with the City of Solvang."

(2) "It is agreed that any insurance maintained by the City of Solvang shall apply in excess of, and not contribute with insurance provided by this policy."

(b) Workers' Compensation coverage shall be at statutory limits.

(c) Professional Liability (Errors and Omissions Liability) in the amount of one million dollars (\$1,000,000). CITY need not be named as an additional insured on professional errors and omissions insurance policies.

All insurance policies required by this section shall not be canceled, limited or non-renewed without first giving 30 days written notice to the CITY. Additionally, the policy shall specifically contain language substantially similar to the following clause:

This insurance shall not be canceled until after thirty days written notice has been given to the CITY of Solvang.

Certificates of insurance evidencing the coverage required by the clauses set forth above shall be filed with CITY prior to the effective date of this Agreement. This is a condition precedent to the formation of any obligation by CITY to compensate DESIGN-BUILDER under this Agreement.

See also Article 14 for County of Santa Barbara insurance requirements.

ARTICLE 7 CONTRACT TIME

DESIGN-BUILDER shall commence the Work for Phase 1 on the date specified in the Notice to Proceed for Phase 1 and fully complete the work within **60 Calendar Days**, the “Phase 1 Time.” The Contract Time at contract award is the Phase 1 Time.

The time allowed for the completion of Phase 2 shall be as follows:

Phase 2 – The DESIGN-BUILDER shall commence the Work for Phase 2 on the date specified in the Notice to Proceed for Phase 2 and fully complete the Work for Phase 2 within **30 Calendar Days**, the “Phase 2 Time.” If the CITY exercises its Option for Phase 2, the Phase 2 Time will be added to the then Contract Time plus any days between the completion of Phase 1 and the exercise of the Option for Phase 2 to establish a revised Contract Time for completion of Phase 1 and 2.

By signing this agreement, DESIGN-BUILDER represents to CITY that i) the Phase 1 Time, and Phase 2 Time are reasonable for completion of the Work, ii) The Contract Time is reasonable for completion of the Work, and iii) DESIGN-BUILDER will complete the Work within the Contract Time.

ARTICLE 8 LIQUIDATE DAMAGES

If DESIGN-BUILDER fails to complete the Work for Phase 2 within the Contract Time, DESIGN-BUILDER shall pay to CITY, as liquidated damages and not as a penalty, the amount indicated below as “Liquidated damages daily rate for Phase 2” for each day after expiration of Contract Time that Work for Phase 2 remains incomplete. The CITY and DESIGN-BUILDER agree that if the Work is not completed within the Contract Time, CITY’s damages would be extremely difficult or impractical to determine and that said amount indicated below is a

reasonable estimate of and reasonable sum for such damages. CITY may deduct any liquidated damages due from DESIGN-BUILDER from any amounts otherwise due to DESIGN-BUILDER under the Contract Documents. This provision shall not limit any right or remedy of CITY in the event of any other default of DESIGN-BUILDER other than failing to complete the Work within the Contract Time. This Article 8 will only apply if the CITY exercises its Option for Phase 2.

Liquidated damages daily rate for Phase 2 - **\$300/day**

ARTICLE 9 COMPENSABLE DELAY

If DESIGN-BUILDER is entitled to an increase in the Contract Sum as a result of a Compensable Delay, determined pursuant to Article 7 and 8 of the General Conditions, the Contract Sum will be increased by an amount per day for each day for which such compensation is payable, said amount shall be as agreed upon by both parties, but in no case shall be greater than **\$300/day**. This Article 9 will apply only if the CITY exercises its Option for Phase 2 and only to the extent that DESIGN-BUILDER fulfills requisites proving entitlement to Compensable Delay.

ARTICLE 10 ASSIGNMENTS

If this Agreement is terminated prior to the exercise of the CITY's Option for Phase 2, the DESIGN-BUILDER shall execute an assignment to the CITY of all contracts with Design Professionals for work to be performed on Phase 1 and 2.

ARTICLE 11 DUE AUTHORIZATION

The person or persons signing this Agreement on behalf of DESIGN-BUILDER hereby represent and warrant to CITY that this Agreement is duly authorized, signed, and delivered by DESIGN-BUILDER.

ARTICLE 12 DESIGN-BUILDER'S COVENANTS AND REPRESENTATIONS

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the DESIGN-BUILDER makes the following covenants and representations to CITY.

- 12.1 DESIGN-BUILDER and all of its Design Professionals and subcontractors are properly certified, licensed, and qualified to perform the Work required by the Contract Documents.
- 12.2 DESIGN-BUILDER accepts the relationship of trust and confidence with the City of Solvang established by the Contract Documents. DESIGN-BUILDER will cooperate with City of Solvang.
- 12.3 DESIGN-BUILDER and its Design Professionals have carefully examined the sites of the Project and the adjacent areas, have suitably investigated the nature

and location of the Construction Work and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to:

- (1) conditions related to site access and to the transportation, disposal, handling and storage of materials;
- (2) the availability of labor, water, power, and roads;
- (3) normal weather conditions;
- (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities;
- (5) the surface conditions of the ground and
- (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Contract Work.

- 12.4 DESIGN-BUILDER and its Design Professionals have prepared the Preliminary Schedule and confirm that the design and construction tasks and milestones are reasonable and feasible. DESIGN-BUILDER also agrees that time is of the essence for the performance of the Work.
- 12.5 DESIGN-BUILDER agrees that all Design Documents will be complete, coordinated, and accurate.
- 12.6 DESIGN-BUILDER agrees that all materials, equipment and furnishings incorporated into or used in the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by the CITY, DESIGN-BUILDER will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.
- 12.7 DESIGN-BUILDER agrees that the Work will be of good quality, free of defects and will conform to the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the CITY in advance, may be considered defective.
- 12.8 DESIGN-BUILDER agrees to correct any error(s), omission(s), or deficiencies in the Contract Documents or Construction Documents at no additional cost to CITY, however, this provision in no way limits the liability of DESIGN-BUILDER.

ARTICLE 13 TERMINATION FOR CONVENIENCE

Upon 7 days' written notice to the DESIGN-BUILDER, the CITY may, without cause and without prejudice to any other right or remedy of the CITY, elect to terminate the Agreement. In such case, the DESIGN-BUILDER shall be paid (without duplication of any items) for the following:

- 13.1 For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including a fair and reasonable sum for overhead on such Work;
- 13.2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus a fair and reasonable sum for overhead on such expenses;
- 13.3. For all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
- 13.4. For reasonable expenses directly attributable to termination.

The CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

ARTICLE 14 COMMUNITY DEVELOPMENT BLOCK GRANT REQUIREMENTS

PREVAILING WAGES: CITY and DESIGN-BUILDER agree that all work performed under this agreement is subject to the Davis-Bacon Federal minimum wage rates and prevailing wage rates pursuant to the California Labor Code. Pursuant to Section 110 of the Housing and Community Development Act of 1974 and Section 1770, et. seq. of the California Labor Code, the DESIGN-BUILDER and all subcontractors shall not pay less than the prevailing rate of per diem wages as predetermined by the United States Secretary of Labor and by the Director of the California Department of Industrial Relations. If there is a difference between the Federal Minimum Wages and the General Prevailing Wage Determinations as predetermined by the Secretary of Labor and by the Director of the California Department of Industrial Relations for similar classifications of labor, DESIGN-BUILDER shall pay not less than the higher wage rate. The applicable Davis-Bacon Federal wage decisions are included in the bid documents. Copies of the prevailing rate of per diem wages pursuant to the California Labor Code are on file at the County Department of General Services and are available to any interested party on request.

Applicability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Apprentices and Trainees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE ACTION: The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). CITY hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority- and women-owned and operated businesses are encouraged to apply.

SECTION 3: The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the HUD, Community Development Block Grant Program, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the project area and that the contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project. Regulations for implementing the Section 3 clause are contained in 24 CFR 135, as amended, and as specified in the project specifications.

FEDERAL TERMS AND CONDITIONS: During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to each of the following:

A. Equal Opportunity

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

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County of Santa Barbara setting forth the provisions of this nondiscrimination clause.
3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.

4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 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 No. 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.
8. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and

policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
12. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

B. Disadvantaged/Minority/Women Business Enterprise Federal Regulatory Requirements under 24 CFR 85.36(e)

1. The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

C. Copeland “Anti-Kickback” Act (18 U.S.C. 874)

Contractor shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

D. Compliance with Labor Standard Provisions

Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions, attached as **Exhibit C** and incorporated by this reference.

E. Compliance with Sections 103 and 107 of the Contract Work Hours and safety Standards Act (40 U.S.C. 327-330)

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR part 5, Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

F. Requirements and Regulations pertaining to Data and Design

All data and design and engineering work created under this Agreement shall be owned by the County and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the County.

G. Requirements and Regulations Pertaining to Reporting

The County of Santa Barbara, HUD and the Comptroller General of the United States or any of their duly authorized representatives shall be granted access to any books, documents, papers and records of Contractor which are directly pertinent the contract.

H. Compliance with Clean Air Act and Clean Water Act.

1. Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).
2. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
3. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR part 15).

I. Compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

D/MBE/WBE IMPLEMENTATION GUIDELINES: The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Disadvantaged/Minority/Women Business Enterprise (D/M/WBE) requirements.

1. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for D/M/WBE participation for this project was placed by the bidder.
2. The names and dates of notices of all certified D/M/WBEs solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the D/M/WBEs were interested.
3. The items of work for which the bidder requested subbids or materials to be supplied by D/M/WBEs, the information furnished interested D/M/WBEs in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate D/M/WBE participation. Where there are D/M/WBEs available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for D/M/WBEs to bid on.
4. The names of D/M/WBEs who submitted bids for any of the work indicated in (3) above, which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the D/M/WBE bid was price, give the price bid by the rejected D/M/WBE and the price bid by the selected subcontractor or supplier.
5. Assistance that the bidder has extended to D/M/WBEs identified in (4) above to remedy the deficiency in their subbids.
6. To find a D/M/WBE certified firm, you may call (916) 445-3520, go on-line to: <http://www.dot.ca.gov/hq/bep>, or via mail at: D/M/WBE Listing for Santa Barbara County, CalTrans – Publications Distribution Unit, 1900 Royal Oaks, Sacramento, CA 95815-3800.

INDEMNIFICATION & INSURANCE PROVISIONS:

INDEMNIFICATION

Indemnification pertaining to other than Professional Services:

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Indemnification pertaining to Professional Services:

CONTRACTOR shall indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. **Workers' Compensation Insurance:** Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.

2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages

resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.