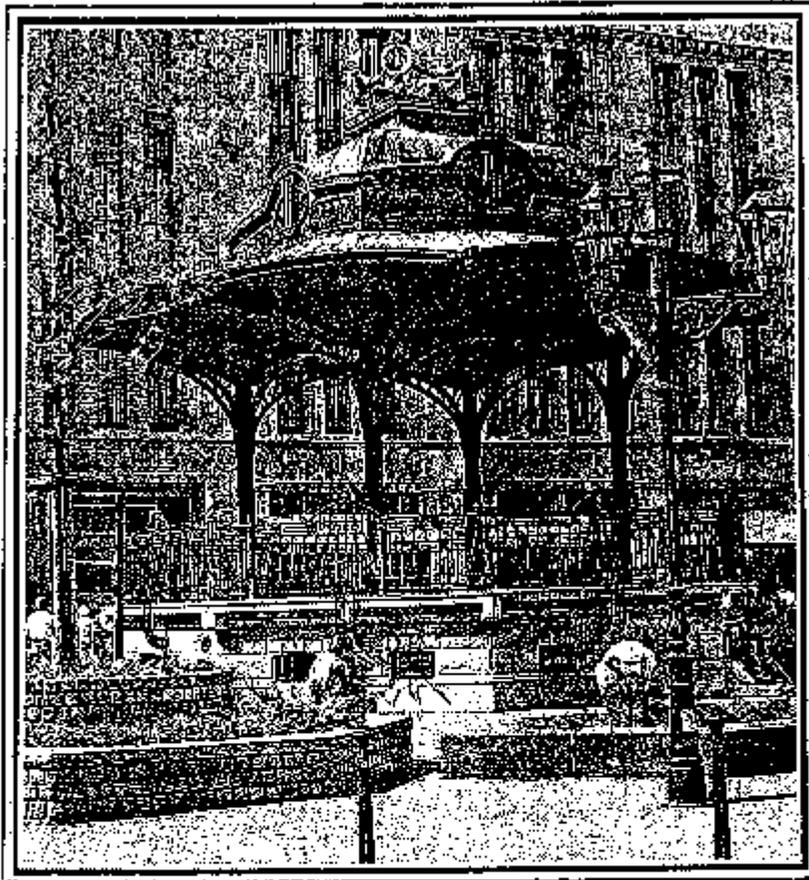


**CITY OF HOUSTON
HOUSING & COMMUNITY DEVELOPMENT
DEPARTMENT
MONITORING & EVALUATION SECTION**

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PROJECT NAME & ADDRESS: _____

NAME OF THE CONTRACTOR/ SUB-CONTRACTOR: _____

ADDRESS INCLUDING ZIP CODE: _____

AREA CODE/ PHONE: _____ FAX: _____

SERVICES TO BE PROVIDED: _____

COMPANY TAX ID NUMBER: _____

AMOUNT OF CONTRACT: _____

OWNERS ETHNICAL / RACIAL BACKGROUND: _____

CONTACT PERSON: _____

SPECIAL CONDITIONS

**COMMUNITY DEVELOPMENT BLOCK GRANT ("CDBG")
PROGRAM PROVISIONS**

Contractor must comply with all of the regulations governing the CDBG Program (24 CFR Part 570), including but not limited to the provisions set forth below. The following terms and conditions are applicable to any contract, including construction work, assisted in whole or in part by funds awarded pursuant to Title I of the Housing and Community Development Act of 1974, as amended, and take precedence over any conflicting provisions in the foregoing Contract:

1. **AVAILABILITY OF FEDERAL FUNDS**

Contractor admits knowledge of the fact that the CITY's obligation hereunder for payment of compensation and expense reimbursement, if any, is limited to the Letter of Credit issued by the United States Government in connection with the CITY's CDBG Program Agreement, and that unless and until adequate funds have been received by the CITY under this Federal Grant and Letter of Credit to pay the Contractor's compensation and expense reimbursement, if any, the CITY shall have no obligation for payment of compensation and expense reimbursement to the Contractor.

2. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

- A. The work to be performed under this Contract is funded under a grant providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of the Department 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 the Contract. The parties to the Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding if any, a notice advising the said labor organization or worker's representative of his 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.

- D. The Contractor will include or have included this Section 3 clause in every lower-tier contract for work in connection with this Contract and will, at the direction of the CITY, take appropriate action pursuant to the lower-tier contractor where it has notice or knowledge that the letter has been found in violation of regulations under 24 CFR Part 135 and will not approve any lower-tier contract unless the lower-tier contractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. 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 grant, binding upon the CITY, its successors, and assigns.

Failure to fulfill these requirements shall subject the CITY, its contractors and subcontractors, its successors, and assigns 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, and revisions thereto. Attached hereto as **Attachment I** and made a part of this Contract are the Compliance forms to be completed and signed by the Contractor at the time of Contract execution and promptly mailed to the City of Houston, Department of Housing and Community Development, Monitoring and Evaluation Section, P.O. Box 1562, Houston, Texas, 77251, Attention - Contract Compliance Officers.

3. **DAVIS-BACON ACT-FEDERAL LABOR STANDARDS PROVISIONS (HUD-4010)**

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, the Contractor and all third-tier and lower-tier contractors engaged under contracts in excess of Two Thousand and No\100 Dollars (\$2,000.00) for the construction, prosecution, demolition, completion or repair of any building or work funded in whole or in part with monies provided under this Contract shall comply with the following requirements:

Applicability

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

A. Minimum Wages.

- (1). All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1948 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 equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a) (1) (iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2). 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:
 - a. The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - b. The classification is utilized in the area by the construction industry; and

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

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 or 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 thirty (30) days of receipt and so advise HUD or its designee or will notify HUD or its designee within the thirty (30)-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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 thirty (30) days of receipt and so advise HUD or its designee or will notify HUD or its designee within the thirty (30)-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140); and

The wage rate (including fringe benefits where appropriate) determined pursuant to 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.

- (3). 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.

- (4). 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.)

B. Withholding.

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor 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 helper, 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 apprentices, trainee or helpers, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

C. Payrolls and Basic Records.

- (1). 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 of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the

amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs 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.)

- (2). The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00041-1), 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).
- (3). 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:
 - a. That 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;
 - b. 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; and
 - c. 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.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WHN-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Section. **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.**

- (4). The contractor or subcontractor shall make the records required under Paragraph 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.

D. Apprentices and Trainees.

- (1). **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 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 journeyman 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 provision 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.

- (2). **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 an individually registered in a program which has received prior approval, evidence 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 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 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.
- (3). **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 Number 11246, as amended, and 29 CFR Part 30.

E. 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.

F. Subcontracts.

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

G. 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.

H. 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, as well as HUD Handbook Number 1344.1 (Federal Labor Standard Compliance in Housing and Community Development Programs), as applicable.

I. 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.

J. 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.

- (1). 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.

- (2). **The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part:**

"Whoever, for the purpose of....influencing in any way the action of such Administration....makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than Five Thousand and No\100 Dollars (\$5,000.00) or imprisoned not more than two years, or both".

K. 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.

4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

As used in this paragraph, the terms "laborer" and "mechanic" include watchmen and guards.

A. 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 forty (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 forty (40) hours in such workweek, whichever is greater.

B. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in this Section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this Section, in the sum of Ten and No\100 Dollars (\$10.00) 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 this Section.

C. 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 this Section.

D. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in Paragraphs A through D 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 A through D of this Section.

E. Health and Safety.

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

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

F. Helpers.

(1). Contracts awarded on or after October 21, 1993.¹

Contractors and subcontractors **may not employ "helpers"** as that term was defined in Section 5.2 (n) (4) of the suspended regulations on any Davis-Bacon covered contract awarded on or after October 21, 1993. Semi-skilled helper classifications and wage rates that were issued in wage determinations pursuant to the suspended regulations and that have been included in contracts awarded on or after October 21, 1993, are not valid. Moreover, the regulatory provision that allowed the consideration of additional classification actions for helpers is suspended; therefore, the Department of Labor ("Department") will not consider any additional classification requests that would permit the use of helpers as defined in the suspended regulations on such contracts. Davis-Bacon general wage determinations are being modified to omit those helper classifications and wage rates that were issued pursuant to the suspended regulations.

In accordance with its prior practice, the Department will, however, recognize helper classifications that are separate and distinct classes of workers performing duties distinguished from those of journey-level workers or other classifications listed on the wage determination; whose use prevails in an area; and who are not employed in an informal apprenticeship or training capacity. As detailed in the November 5, 1993, notice, the Department will issue such helpers on wage determinations or consider additional classification requests for such helpers where these criteria are met and a specific description of duties is associated with the particular helper class. Helpers may be employed on contracts awarded after October 21, 1993, only if a definition of helper's duties establishing the helper as a separate and distinct classification is set forth in the wage determination or on the additional classification approval documents.

¹IN THE CASE OF PROJECTS ASSISTED UNDER THE NATIONAL HOUSING ACT, THE APPLICABLE DATE IS THE START OF CONSTRUCTION OR THE INITIAL ENDORSEMENT OF THE MORTGAGE, WHICHEVER OCCURS FIRST. SIMILARLY, IN THE CASE OF PROJECTS TO RECEIVE HOUSING ASSISTANCE PAYMENTS UNDER SECTION 8 OF THE U.S. HOUSING ACT OF 1937, THE APPLICABLE DATE IS THE BEGINNING OF CONSTRUCTION OR THE DATE THE HOUSING ASSISTANCE PAYMENT CONTRACT IS EXECUTED, WHICHEVER OCCURS FIRST.

- (2). **Contracts awarded prior to October 21, 1993 where the contract contains the newly-suspended helper clauses and the contract wage**

determination contains a helper classification or a helper classifications has been approved for use on the project.

Contractors and subcontractors may continue to employ individuals in helper classifications that were issued for application to contracts or approved for use on contracts awarded prior to the suspension of the regulations. The workers must, however, be employed in accordance with the regulatory definition set forth in Section 5.2 (n) (4) of Regulations, Part 5, which was applicable at the time the contract was awarded, and the workers must be paid at least the corresponding wage rate for the helper classification in which they are performing.

The Department will continue to take action to ensure that workers erroneously classified as helpers are reclassified as journey-level workers or laborers in accordance with the work performed (those cases, for example, where employees performed work solely of a skilled nature, where individuals do not work under the supervision and direction of a journey-level classification, or where workers perform duties beyond the duties performed by helpers pursuant to the practice in the area. The Department will also take enforcement action against any contractor or subcontractor that fails to compensate its helpers according to the applicable wage determination rate or approved conformance wage rate. Contracting agencies are also reminded of their enforcement responsibilities under Reorganization Plan Number 14 of 1950 and encouraged to take action as may be necessary to ensure compliance in such situations.

- (3). **Contracts awarded prior to October 21, 1993 where the contract contains the newly-suspended helper clauses but the contract wage determination does not contain helper classification and a helper classification has not yet been approved for use on the project.**

Contractors and subcontractors may not employ any classification, including helpers, on a Davis-Bacon covered project unless the wage determination contains the classification or the classification is approved pursuant to the Department's additional classification procedures. The regulations provide that the wage rates determined for unlisted classifications under the additional classification procedures shall be paid to all workers performing work in that classification from the first day on which work was performed. This regulatory provision permits retroactive application of approved additional classifications and wage rates and, at the same time, also allows for retroactive enforcement action against a contractor or subcontractor whose proposed additional classification and/or wage rate is denied by the Department.

Clearly, the Department cannot act on conformance requests for helpers or requests for reconsideration of such conformance actions given the

Congressional action. Thus, contractors or subcontractors who classify and pay individuals as helpers with the expectation that the Department will approve an additional classification request at some future point place themselves at risk of subsequent enforcement action, including the withholding of contract funds. Under these circumstances, agencies should use their enforcement discretion in determining whether withholding action is appropriate to protect the interest of employees where contractors pay individuals less than the journey-level rate during the period of the prohibition. Agencies clearly should withhold contract funds where the Department has denied a conformance request, even though the contractor or subcontractor may have or may intend to request reconsideration of the additional classification denial. Agencies should also withhold contract payments on any contract completed or nearing completion during the suspension of the helper regulations so that any back wages potentially due employees are not lost because the contract was closed and contract funds paid out.

- (4). **Contracts awarded prior to October 21, 1993 where the contract does not contain the revised helper clauses.**

In implementing the helper regulations after the lifting of the prohibition imposed by Section 303 of the 1991 Dire Emergency Supplement Appropriation Act, the Department suggested that contracting agencies modify existing contracts to include the revised helper contract clauses, thereafter permitting the addition of helper classifications through the additional classification procedures in Section 5.5(a)(1) (ii) of Regulations; Part 5. However, in light of the Congressional action, that option no longer exists for contracts that were awarded without the helper contract clauses and which have not yet been modified. Contractors and subcontractors performing on such contracts may not employ helpers as those classifications were defined by section 5.2(n)(4) of Regulations, Part 5.

5. **LISTING OF EMPLOYMENT OPENINGS**

[This clause is applicable pursuant to 41 CFR 50-250 if this contract is for Two Thousand Five Hundred and No\100 Dollars (\$2,500.00) or more].

- A. The Contractor agrees, in order to provide special emphasis to employment of qualified disabled veterans and veterans of the Vietnam era, that all suitable employment openings of the Contractor which exist at the time of the execution of the Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment other than the one wherein the Contract is being performed, but excluding those of independently operated corporate affiliates, shall be offered for listing at an appropriate local office of the State employment service system wherein the opening occurs and to provide such reports to such local office regarding

employment openings and hires as may be required: **PROVIDED**, That if this Contract is for less than Ten Thousand and No\100 Dollars (\$10,000.00) or if it is with a State or local government, the reports set forth in Paragraphs C. and D. are not required.

- B. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment service or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. This listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in any statutes, Executive Orders, or regulations regarding nondiscrimination in employment.
- C. The reports required by Paragraph A. of this clause shall include, but not limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one establishment in a State, with the central office of the State employment service. Such reports shall indicate for each establishment: (i) the number of individuals who were hired during the reporting period; (ii) the number of those hired who were disabled veterans; and (iii) the number of those hired who were disabled veterans of the Vietnam era. The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made under this Contract. The CITY shall maintain copies of the reports submitted until the expiration of one (1) year after final payment under this Contract, during which time, they shall be made available, upon request, for examination by any authorized representatives of the Secretary of Labor and the CITY.

6. **EXECUTIVE ORDER NUMBER 11246**

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

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

or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

- C. The Contractor will send to each labor union or representative of workers with which 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 Number 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order Number 11246 of September 24, 1965, and of the rules, regulations and relevant orders of Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order Number 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of the U.S. Department of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the CITY and the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clause of this Contract or with any of 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 Number 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order Number 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of Paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor issued pursuant to section 204 of Executive Order Number 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors.

The Contractor will take such action with respect to any subcontractor or purchase order as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance: **PROVIDED**, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CITY, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. **EQUAL OPPORTUNITY**

All personnel action, including but not limited to, hiring, promotion, reassignment and termination of project staff or personnel shall be done in compliance with all applicable Federal, State and City equal employment and economic opportunity laws, statutes, ordinances, resolutions, and instructions. The Contractor shall provide, upon request of the CITY, written assurances and information concerning the Contractor's implementation of such laws, statutes, ordinances, resolutions and instructions in such Contractor's employment practices.

8. **FINDINGS CONFIDENTIAL**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization other than an agency of the United States Government, without the prior approval of the CITY.

9. **CONFLICT OF INTEREST**

- A. The Contractor agrees that no member of or Delegate to the Congress of the United States, and no Residents Commissioner, shall be admitted to any share or part of this Contract or to any benefit direct or indirect to arise from the same.
- B. The Contractor agrees that no member, officer, employee, or other public official or agent of the CITY who exercises any functions or responsibilities in connection with the CDBG Program or any person who exercises any functions or responsibilities in connection with the CDBG Program during his tenure or for one (1) year thereafter shall have any personal financial interest direct or indirect, in this Contract or lower-tier contract or the proceeds thereof.
- C. The Contractor covenants that none of his officers, directors, employees, or agents presently have nor shall acquire any interest direct or indirect within the boundaries of the City of Houston or any parcels therein, which conflict or give the appearance of conflicting in any manner or degree with the performance of the work hereunder. The Contractor further covenants that no person shall be employed in the performance of this Contract who has any interest which would be in conflict with the performance of work hereunder or which would give the appearance of being in conflict with the performance of work hereunder.
- D. Contractor covenants that no person of the Contractor, including but not limited to: owners; officers; directors; employees; agents or consultants shall either offer to give or give any gratuity, favor, or anything of monetary value to any member, officer, employee, or other public official or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out the Housing and Community Development Prime Grant Agreement.
- E. The Contractor further covenants that no person of the Contractor who has any connection with the performance of the work called for by this Contract, including

but not limited to: owners; officers; directors; employees; agents or consultants shall either offer to give or give any gratuity, favor, or anything of monetary value to any subcontractor or potential subcontractor.

10. **REPORTS AND RECORDS**

The Contractor shall submit all reports and keep all records as required by the CITY and the U.S. Department of Housing and Urban Development and shall give the CITY, the U.S. Department of Housing and Urban Development, and the Comptroller General, through any authorized representative, the access to and the right to examine at any time all records, books, papers, or documents related to this Contract.

11. **ENVIRONMENTAL QUALITY**

That Contractor agrees to take care to conduct all services or functions in the performance of this Contract in a manner which will preserve and enhance the quality of the natural environment. The Contractor further agrees to conform to any instructions issued by the CITY from time to time for the purpose of eliminating or minimizing real or potential harm to the natural environment caused by actions or omissions of the Contractor or any lower-tier contractor. A lower-tier contractor for the purpose of this clause is any entity which contracts for the performance of a portion of the services called for by this Contract.

12. **COMPLIANCE WITH CLEAN AIR AND WATER ACTS**

This Contract is subject to the requirements of the Clean Air Act, as amended (42 USC 1857 et seq.) the Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.), and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended, from time to time. In compliance with said regulations, the Contractor agrees that:

- A. No facility to be utilized in the performance of any nonexempt contract hereunder is listed on the List of Violating Facilities issued by the U. S. Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Contractor will comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. As a condition for the award of this Contract, prompt notice shall be given to the CITY of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Contract or any portion thereof is under consideration to be listed on the EPA List of Violating Facilities.
- D. Contractor will include or cause to be included the requirements contained in

Paragraphs A. through C. of this clause in every nonexempt contract, whether third-tier or lower-tier, hereunder and will take such action as the CITY may direct as a means of enforcing such provisions. In no event shall any amount of the funds provided under this Contract be utilized with respect to a facility which has given rise to a conviction under Section 113 (c)(1) of the Clean Air Act or Section 309 (c) of the Federal Water Pollution Control Act.

13. **COMPLIANCE WITH THE ARCHITECTURAL BARRIERS ACT OF 1968**

The Architectural Barriers Act of 1968, 42 U.S.C. 4151 is applicable to assistance under this Contract and requires that the design of any facility constructed in whole or in part with funds from Title I of the Housing and Community Development Act of 1974 comply with the "American Standard Specification for Making Buildings and Facilities Accessible, and Useable by, the Physically Handicapped" Number A-117.1 R-1971, as modified (41 CFR 101-19.603).

14. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P. L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations ("CFR") Part 1 which implement Title VI. In accordance with Title VI, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

15. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, (24 CFR & 570.602), issued pursuant to Section 109. No person in the United States shall, on the ground of race, color, national origin or sex, may 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. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

16. **COURT ACTIONS**

The Contractor agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, the Contractor or any of the parties involved in the implementation and administration of this Agreement.

17. **DRUG-FREE WORKPLACE ACT OF 1988**

The Contractor will act in accordance with the requirements of the Drug-Free Workplace Act of 1988 and develop a Drug-Free Workplace Statement. The Contractor will publish a statement to all its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and that certain specific actions will be taken against employee's for violation of such prohibition.

18. **BENEFIT TO LOW AND MODERATE INCOME PERSONS**

The Grantee understands that projects which receive CDBG funds must principally benefit low and moderate income persons. The Grantee shall ensure that the facility shall serve primarily the low and moderate income persons who reside in the area of the project.

The term "low and moderate income persons" shall have the meaning given the terms "lower income families" in Section 3 (b)(2) of the United States Housing Act of 1937.

19. **LEAD-BASED PAINT POISONING PREVENTION ACT**

This contract is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sections 4821-4846 and implementing regulations, at 24 CFR Part 35). Specifically this contract shall be made subject to the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations, and Contractor shall be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

20. **RECORDS FOR AUDIT PURPOSES**

Notwithstanding any other provision of this Agreement, the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for three years from the expiration date of the Agreement unless a longer period is required under Title 24 CFR §84.53 for non-profit organizations and 24 CFR §84.42 for others. The Contractor shall maintain records required by 24 CFR §135.120 for the period that HUD requires the records to be maintained. The Contractor will give the City, HUD, the Comptroller General of the United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

21. **USE OF DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTORS OR SUBRECIPIENTS**

- A. The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension or placement in ineligibility status under provisions of 24 CFR Part 24 or under the authority of the City.
- B. The Contractor shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. firms in conducting procurements for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project.

22. **UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES**

The Contractor shall comply with the policies, guidelines and requirements of 24 CFR 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," and OMB Circular Numbers A-110, A-87 and A-122 as applicable, as they related to the acceptance and use of Federal funds.

23. **FLOOD DISASTER PROTECTION**

- A. This Agreement is subject to the requirement of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the mandatory purchase of flood insurance requirements of Section 102 (a) of said act.
- B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under Section 102 (a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

24. * **TITLE VIII OF THE CIVIL RIGHTS ACT OF 1965 AND EXECUTIVE ORDER 11063 (*APPLIES TO CONTRACTS OF INSURANCE OR GUARANTY)**

The Contractor shall comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) ("Title VIII"). Title VIII prohibits any person from discriminating in the sale of rental of housing, the financing of housing or the provisions of brokerage services, including in any

way making available or denying a dwelling to any person because of race, color, religion, sex, or national origin. The Contractor shall further comply with Executive Order Number 11063 and with the implementing regulations. 24 CFR Part 107. The failure or refusal to comply with Executive Order Number 11063 or this part shall be a proper basis for the imposition of sanctions provided in 24 CFR Part 107.60.

*** This section applies to contracts of insurance of guaranty.**

25. **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (41 CFR 60-741-4)**

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The contractor will notify each labor union or representatives of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The contractor will include the provisions of this clause in every subcontract or purchase order of Two Thousand Five Hundred and No\100 Dollars (\$2,500.00) or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontract or vendor. The contractor will take such action with respect to any

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subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**MINORITY, WOMEN, DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM REQUIREMENTS**

A. Documents that must be signed and returned to the Department of Housing and Community Development ("DHCD") with the proposal or within a period designated by DHCD upon notification of finalist or successful proposer status.

- (1). Minority/Women Business Enterprise ("MWBE") Participation Plan (FC-55) - List of proposed Subcontractors and Suppliers
- (2). Executed Subcontract(s), or Letter(s) of Intent for each MWBE Subcontractor or Supplier, including:

Name of MWBE Subcontractor/Supplier;
Description of the Scope of Work to be Performed;
Dollar value of each proposed MWBE subcontract; or
Documentation of Good Faith Efforts to meet the MWBE Goal.

These documents should be submitted to DHCD, along with documentation of Good Faith Efforts, if applicable.

B. Report that must be submitted during the course of the contract.

MWBE Monthly Utilization Report (FC-56)
Mail original of completed report to:

Department of Housing and Community Development
601 Sawyer, Suite 101
Houston, TX 77007
ATTN: Pirooz Farhoomand

C. MWBE Requirements

(1). ***Purpose***

To facilitate implementation of Chapter 15 Article V of the City of Houston Code of Ordinances relating to MWBE Contract Participation.

(2). ***Policy***

It is the policy of the City to encourage the full participation of MWBEs in all phases of its procurement activities and to afford them a full and fair opportunity to compete for City contracts at all levels.

(3). ***Policy Elements***

- (a). The Contractor agrees to ensure that MWBEs, as defined in Chapter 15 Article V of the City of Houston Code of Ordinances, have a full and fair opportunity to participate in the performance of City contracts. In this regard, the Contractor shall take all reasonable Good Faith Efforts as defined herein, to meet the MWBE Goal for this contract.
- (b). The Contractor and any Subcontractor/Supplier shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of City contracts.
- (c). The MWBE Participation Plan (FC-55) must be submitted with the Proposal or within a period designated by DHCD upon notification of finalist or successful proposer status. This decision is the responsibility of DHCD.
- (d). Contractor's performance in meeting the MWBE Participation Goal will be monitored by the DHCD Monitoring & Evaluation Division.

(4). ***Percentage Goal***

The percentage goal for MWBE participation in the work to be performed under this contract is _____ percent.

(5). ***Proposer Responsibilities***

- (a). ***Prior to Award:*** Proposer must submit a plan ("Plan") setting out how the goal is to be met with the Proposal or within a period designated by DHCD upon notification of finalist or successful proposer status, which must minimally include:
 - (i) MWBE Participation Plan (FC-55) - List of proposed Subcontractors/Suppliers. All MWBEs listed on this form must be certified by the Affirmative Action Division prior to the Request for Proposal due date with the following exception: The Affirmative Action Division will consider priority certification of non-certified firms in those cases where the successful proposer proposes the utilization of a firm for a specific capability not found among at least three (3) certified firms.
 - (ii). Executed Subcontract(s), or Letter(s) of Intent for each MWBE Subcontractor or Supplier, including:

Name of MWBE Subcontractor/Supplier;
Description of the Scope of Work to be Performed;
Dollar value of each proposed MWBE subcontract; or

- (iii). Documentation of Good Faith Efforts to meet the MWBE Goal, if the goal is not met. See **Attachment "II"** for minimum standards for Good Faith Efforts. Such documentation shall be presented to DHCD for review by the Affirmative Action Division.

Note 1: Failure to respond within the designated period could result in a finalist being considered non-responsive and the next proposer being considered for award.

Note 2: The Proposer shall be bound by the Plan submitted unless a waiver is received from the Director of DHCD ("Director").

Note 3: The Director is authorized to suspend any Contractor who has failed to make Good Faith Efforts to meet an established MWBE Goal; and to suspend any MWBE who has failed to make Good Faith Efforts to meet all requirements necessary for participation as an MWBE.

- (b). Prior to award, the successful proposer shall execute written contracts with all of its MWBE Subcontractors and shall assure that all such contracts contain the terms set out in **Attachment II-A**. Contracts (including purchase orders or similar instruments) with MWBE suppliers may be issued after the Notice to Proceed but should incorporate the terms in **Attachment II-A**.
- (c). Prior to award, Contractor shall designate an MWBE liaison officer who will administer the Contractor's MWBE programs and who shall be responsible for maintenance of records of Good Faith Efforts to subcontract with MWBE Subcontractors/Suppliers.

(d). After Award, Contractor shall:

- (i). Submit MWBE Monthly Utilization Reports (FC-56), attached herein, to the DHCD Monitoring & Evaluation Division.
- (ii). Comply with Form (FC-55) MWBE Participation Plan, unless it has received approval from the Director to deviate therefrom. Approval will not be reasonably withheld.
- (iii). Upon approval of the Director, make Good Faith Efforts to replace a certified MWBE Subcontractor/Supplier that is displaced, for any reason, with another certified MWBE.
- (iv). Submit all disputes with MWBE Subcontractors and Suppliers that are unable to be resolved by the DHCD to binding arbitration as set out in the City's Affirmative Action and Contract Compliance Division, MWBE Procedures.
- (v). Make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of the contract; and agree to protect, defend and indemnify the City from any claims or liability arising out of Contractor's failure to make such payments. (Disputes relating to payment of MWBE Subcontractors shall be submitted to arbitration in the same manner as any other disputes under the MWBE subcontract. Failure of the Contractor to comply with the decisions of the arbitrator may, at the sole discretion of the City, be deemed a material breach leading to termination of this contract).

(6). ***Eligibility of MWBEs***

- (a). To ensure that the MWBE program benefits only those firms that are owned and controlled by a minority person(s) or a woman (women), the Affirmative Action Division will certify the eligibility of MWBE Subcontractors/Suppliers. Contact the Affirmative Action Division at (713) 837-9000 for information regarding certification.
- (b). The Affirmative Action Division publishes and maintains a MWBE

Directory. This Directory is available from the Affirmative Action Division for contractor use.

NOTE: ALL MWBE FIRMS, EVEN IF CERTIFIED BY ANOTHER AGENCY, MUST BE CERTIFIED BY THE AFFIRMATIVE ACTION DIVISION IN ORDER TO QUALIFY FOR ATTAINMENT OF THE MWBE GOAL.

(7). ***Determination of MWBE Participation***

MWBE participation shall be counted toward meeting the MWBE Goal in accordance with the following:

- (a). Once a firm is certified as an MWBE, the total dollar value of the subcontract awarded to the MWBE is counted toward the MWBE Participation Goal.
- (b). When a Contractor or Subcontractor organizes a joint venture with one (1) or more MWBEs to satisfy its MWBE Goal, the Director shall determine the percent of participation resulting from such joint venture to be counted toward the MWBE Goal.
- (c). Contractor may count toward its MWBE Goal those MWBE Subcontractors/Suppliers performing a Commercially Acceptable Function.

COMMERCIALLY ACCEPTABLE FUNCTION means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWBE is responsible. Without limiting the generality of the foregoing, an MWBE will not be considered to be performing a Commercially Acceptable Function if it subcontracts, to non-MWBE firms or to other MWBE firms, more than fifty (50%) percent of a contract being counted toward the applicable participation goal, unless such subcontracting in excess of fifty (50%) percent has been expressly permitted by the Director of Affirmative Action in a written waiver of this requirement. A waiver shall be granted upon demonstration that the industry standard for the type of work involved is to subcontract over fifty (50%) percent of the work.

(8). ***Compliance of the Contractor***

To ensure compliance with MWBE requirements, the DHCD will monitor Contractor's efforts regarding MWBE Subcontractors/Suppliers during the

performance of this Contract. This may be accomplished through the following: job site visits, reviewing of records and reports, interviews of randomly selected personnel.

(9). ***Records and Reports***

- (a). Contractor shall submit an initial report forty (40) days after the Contract begins, and each month thereafter, outlining MWBE participation until all MWBE subcontracting or material supply activity is completed. The report will be due on the 15th day following each month. The MWBE Utilization Report (FC-56), herein attached, is to be used for this reporting. This form may be reproduced by the contractor from the copy herein enclosed.
- (b). Contractor shall maintain the following records for review upon request by the DHCD:
 - (i). Copies of Subcontractor agreements and purchase orders as executed;
 - (ii). Documentation of payments and other transactions with MWBE Subcontractors/Suppliers; and
 - (iii). Appropriate explanations of any changes or replacements of MWBE Subcontractors/Suppliers.

NOTE: ALL REPLACEMENT MWBES MUST BE CERTIFIED BY THE AFFIRMATIVE ACTION DIVISION.

- (c). If the MWBE Goal is not being met, the monthly report shall include a narrative description of the progress being made in MWBE participation. Reports are required when no activity has occurred in a reporting period.
- (d). All such records must be retained for a period of four (4) years following completion of the work and shall be available at reasonable times and places for inspection by authorized representatives of the City.

D. **Sanctions**

(1). ***General***

Pursuant to Section 15-86 of the Code of Ordinances, the Director is authorized to suspend for a period of up to, but not to exceed, five (5) years, any Contractor who has failed to make Good Faith Efforts or who has failed to comply with its submitted

Plan pursuant to Section 15-85 unless a waiver has been granted from engaging in any Contract with the City. The Director is also authorized to suspend any MWBE who has failed to make Good Faith Efforts from engaging in any Contract affected by Article V of Chapter 15 of the Code of Ordinances, for a period of up to, but not to exceed, five (5) years.

(2). ***Guidelines for Imposition of Sanctions***

(a). ***General***

- (i). No suspension shall be imposed by the Director except upon evidence of specific conduct on the part of an MWBE or a Contractor that is inconsistent with or in direct contravention of specific applicable requirements for Good Faith Efforts; and
- (ii). Imposition and enforcement of suspensions shall be consistent with applicable state law.

(b). ***Severity of Sanctions***

In determining the length of any suspension, the Director shall consider the following:

whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Contractor or MWBE of the duties imposed on them by Article V of Chapter 15 of the Code of Ordinances and these procedures;

the number of specific incidences of failure by the Contractor or MWBE to comply;

whether the Contractor or MWBE has been previously suspended;

whether the Contractor or MWBE has failed or refused to provide the Director with any information requested by the Director or required to be submitted to the Director pursuant to law or these procedures;

whether the Contractor or MWBE has materially misrepresented any applicable facts in any filing or communication to the Director; and

whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

(3). *Delegation*

A decision to implement a suspension may be taken after notice and an opportunity for a hearing by the Director or by another impartial person designated by the Director for that purpose. The Director or other person conducting the hearing shall not have participated in the actions or investigations giving rise to the suspension hearing.

(4). *Notice*

- (a). Prior to the imposition of any suspension, the Director shall deliver written notice to the Contractor or MWBE setting forth the grounds for the proposed suspension and setting the date, time and place to appear before the Hearing Officer for a hearing on the matter.
- (b). Any notice required or permitted to be given hereunder to any Contractor or MWBE may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to their most recent address as specified in the records of the Affirmative Action and Contract Compliance Division or in the Contract if no address is on file with the Affirmative Action and Contract Compliance Division.

(5). *Hearing Procedures*

Proceedings before the Director or other hearing officer shall be conducted informally, provided that each party may be represented by counsel and may present evidence and cross-examine witnesses. The burden shall be upon the City by a preponderance of evidence. The decision shall be reduced to writing and notice provided to the Contractor or MWBE.

(6). *Appeals*

Appeals authorized pursuant to Section 15-86(b) of the Code of Ordinance shall be conducted by an arbitrator who shall act as the Hearing Officer. Alternatively, an appeal may be taken to City Council, subject to the appellant's compliance with Rule 12 of the City Council Rules of Procedure. Appeals shall be initiated by filing a written notice of appeal with the Director no later than fifteen (15) days following the mailing of notice of the decision of the Director and the appeal notice shall state whether the appeal is requested to City Council or to an arbitrator. If an arbitration appeal is requested, then the arbitrator shall be selected as provided in Section 9 of these Procedures. The arbitrator's or City Council's decision, as applicable, shall be

final. The Director shall determine whether to suspend his or her order pending an appeal, taking into account the criteria set forth in Section 6(B)(2) of these Procedures.

**CITY OF HOUSTON
M/WBE
GOOD FAITH EFFORTS**

"Good Faith Efforts" means those efforts required to be made and demonstrated by an apparently successful bidder or proposer prior to award of a Contract (whether a Goal Oriented Contract or a Regulated Contract) and at the conclusion of performance of the Contract in the event it has been unsuccessful in meeting the Contract's MWBE Goal.

A. Good Faith Efforts for non-MWBEs in construction, procurement and professional services shall mean at a minimum the following:

1. *Delivery of written notice to the following:*

- a. All local certified MWBEs in the directory for the month prior to the month of the bid or proposal submission date and identified as performing work or services or providing commodities for all potential subcontracting or supply categories in the Contract;
- b. All minority and women focused associations identified in the directory for the month prior to the month of the bid or proposal submission date;
- c. All news media focused toward minority persons and women identified in the directory for the month prior to the month of the bid or proposal submission date; and
- d. All MWBEs which requested information on the Contract.

2. *The written notices will contain:*

- a. Adequate information about plans, specifications and relevant terms and conditions of the Contract and about the work to be subcontract or the goods to be obtained from Subcontractors and Suppliers;
- b. A contact person within the apparent low bidder's or proposer's office to answer questions;
- c. Information as to the apparent low bidder's or proposer's bonding requirements, the procedure for obtaining any needed bond and the name and telephone number of one (1) or more acceptable surety companies to contact;
- d. The last date for receipt by the bidder or proposer of MWBE bids or price quotations.

3. Attendance at any special pre-bid meeting called to inform MWBEs of subcontracting or supply opportunities, if set forth in the bidding or proposal documents.

4. Division of the Contract, as recommended by the department head of the initiating

City Department and in accordance with normal industry practices, into small, economically feasible segments that could be performed by MWBE.

5. Provide an explanation for rejection to any MWBE whose bid or price quotation is rejected, unless another MWBE is accepted for the same work, as follows:
 - a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected MWBE; and
 - b. Where price competitiveness is the reason for rejection, a meeting must be held, if requested, with the price-rejected MWBE to discuss the rejection.
6. Provide an explanation for rejection of any MWBE to the Department of Housing and Community Development ("DHCD"), unless another MWBE firm is accepted for the same work. Include the name of the non-MWBE firm proposed to be awarded the subcontract or supply agreement and if price competitiveness is the reason for rejection, the MWBE's price quotation and the successful non-MWBE's price quotation.

B. Good Faith Efforts for MWBEs in construction, procurement and professional services shall mean at a minimum the following:

1. Furnishing prompt written responses to any written inquiry from the Director or any employee of the DHCD regarding the MWBEs performance or information pertaining to the MWBEs certification;
2. Ensuring that at all times during the performance of any Contract or subcontract subject to the requirements of Chapter 1 of the Code of Ordinances the MWBE is engaging in a commercially acceptable function as that term is defined herein;
3. Ensuring that no application, response to a request for information, or other factual material submitted to the Director or any employee of the DHCD contains any material misrepresentation; and
4. Furnishing prompt responses to requests from the department administering the Contract, the City Attorney and the City Controller for information, books and records needed to verify compliance.

SPECIAL ITEMS

SPECIAL ITEMS:

ADMINISTRATIVE REQUIREMENTS

The following administrative requirements should be considered in any HUD assisted construction activities when Davis Bacon Act applies. In order to ensure expeditious processing of the paper work necessary for compliance, please follow the instructions below:

- A. Request for a wage determination must be made prior to advertising the bid. Wage determination requests, including the Scope of Work for the project, should be submitted to the Monitoring & Evaluation Division of the City's Department of Housing and Community Development.
- B. The applicable wage determination, including any modifications must be part of the bid documents and **it should be verified by the City's Department of Housing and Community Development ten (10) days prior to the bid opening date. Failure to include the required wage determination and appropriate Labor Standards Provisions in bid documents or contracts will not relieve the City or contractors from potential liabilities for enforcement actions.**
- C. The contract should be awarded within ninety (90) days after Bid opening. Otherwise, any modifications announced in that wage decision(s) prior to the award of the contract will be applicable to that decision(s).
- D. **Verification of the contractors eligibility to work on federally funded projects is a must.** The Monitoring & Evaluation Division of the Department of Housing and Community Development ("DHCD") must verify that all the prime contractors are eligible prior to contract award by reviewing the current HUD list of debarred, suspended, or ineligible participants. **The department cannot process payment requests if the prime contractors are not cleared, even though the construction may be partially done. Please follow these steps:**
 - (1). A copy of the attached form (Request for Contractor Clearance, page FC-63) should be submitted by all contractors (bidders) at the time of the bid. Once the bids are opened and an apparent low bidder has been identified, submit the Request for Contractor Clearance form to the Monitoring & Evaluation Section by fax at (713) 868-8364, attention: Mr. Pirooz Farhoomand.
 - (2). The DHCD will not co-sign the Request for Council Action (RCA) recommending award of a contract to the apparent low bidder unless the apparent low bidder has been cleared by the City.
 - (3). If there is M/WBE Goal involved after notification of award, the Contractor has ten (10) working days to document M/WBE sub-contractor/supplier certification by submitting the proper form (FC- 55) or to demonstrate a good

faith effort.

- (4). **All M/WBE Firms, even if certified by another agency must be certified by the Affirmative Action Division in order to qualify for attainment of the M/WBE Goal. Please contact the Affirmative Action Division at (713) 837-9000 for further assistance.**

ATTACHMENT I

SECTION 3 PLAN FORMAT FOR CONTRACTS AND SUBCONTRACTS OF \$100,000 AND OVER

POLICY

The purpose of this format is to set forth procedures to assure compliance with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u. Section requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in or owned in substantial part by persons residing in the project.

INSTRUCTIONS

Contractor and Subcontractor shall fill out, sign and return to the City of Houston, Department of Housing & Community Development, the following applicable forms at the times identified. All forms must be signed by a duly authorized member of the firm. If you have other pertinent information in addition to that requested on the forms, please include it as an attachment. Listed below are the forms which the Contractor must submit:

Section 3 Resident Certification	FC-40	Upon Employment
Section 3 Business Certification	FC-41	10 days after Notice of Intent to Award
Contractor Section 3 Compliance Certification	FC-43	10 days after Notice of Intent to Award
HUD-4238-CD-1 (Equal Opportunity) Form	FC-44	10 days after Notice of Intent to Award
First Source Hiring Agreement	FC-45	10 days after Notice of Intent to Award
Contractor Workforce Analysis Form 1	FC-47	10 days after Notice of Intent to Award
Subcontractor Workforce Analysis Form 2	FC-48	10 days after Notice of Intent to Award
Section 3 Business Utilization Form 3	FC-49	10 days after Notice of Intent to Award
Contractor Section 3 Compliance Form 4a	FC-50	Monthly, after Start of Work
Subcontractor Section 3 Compliance Form 4b	FC-51	Monthly, after Start of Work
Contractor's Income Verification Form 5	FC-53	To be Maintained in Contractors Records
M/W/DBE Participation Plan	FC-55	10 days after Notice of Intent to Award
M/W/DBE Monthly Utilization Report	FC-56	Monthly, after Start of Work
Request for Contractor Clearance	FC-63	Upon Submission of Bid

SECTION 3 RESIDENT CERTIFICATION

1. I am a resident of the City of Houston, Texas and have been since _____.
2. My current address is _____.
3. My source of income is _____
(exact source, i.e. employers name, SSI, AFDC, etc....)
4. My monthly income is \$ _____ and my yearly income is \$ _____.

Signature: _____

Telephone Number: _____

STATE OF TEXAS §

CITY OF HOUSTON §

SECTION 3 BUSINESS CERTIFICATION

The undersigned makes this affidavit with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury he/ she hereby states:

1. I am the _____ of _____
(owner, partner, officer, representative, agent) (Company Name)
and whose business concerns is (check only one)
 - () 51 percent or more is owned by section 3 residents; or
 - () Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three (3) years of the date of first employment with the business concern were section 3 residents; or
 - () Provides subcontracts in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraph I.B.(1) or (2) of the definition of Section 3 business concerns.
 - () None of the above

2. And the Project _____ I/We claim preference in the category indicated below (check only one)
 - () **(Category 1 business)**
Business concerns that are 51 percent or more owned by residents of the housing development(s) for which the section 3 covered assistance is expended, or whose full-time, permanent work force includes 30 percent of these person as employees;
 - () **(Category 2 business)**
Business concerns that are 51 percent or more owned by residents of other housing development(s) managed by the Housing Authority, or whose full-time, permanent work force includes 30 percent of these persons as employees;

- () **(Category 3 business)**
HUD Youthbuild programs being carried out in the City of Houston, Texas where the section 3 covered assistance is expended;
- () **(Category 4 business)**
Business concerns that are 51 percent or more owned by section 3 residents; or, whose permanent, full-time work force includes no less than 30 percent section 3 residents; or, that subcontract in excess of 25 percent of the dollar awarded of the total amount of the subcontracts identified above as a **Category 1** or a **Category 2 business**.
- () No preference claimed.

Affiant's Signature: _____ Address: _____

Affiant's Title: _____ Telephone: _____

Affiant's Company Name:

Subscribed and sworn to under oath before me this ____ day of _____, 200 ____.

My commission expires:

NOTARY: _____

STATE OF TEXAS §

CITY OF HOUSTON §

CONTRACTOR'S SECTION 3 COMPLIANCE CERTIFICATION

The undersigned makes this affidavit with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury I hereby state:

1. I am the _____ of _____
(owner, partner, officer, representative, agent) (Company Name)
2. My company adheres to Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u which requires, to the greatest extent feasible, that a "good faith effort" given to identifying small businesses located within the boundaries of the Section 3 service area, making them aware of contracting opportunities, encouraging their participation and actually awarding contracts to Section 3 business concerns through the assistance of the City of Houston and their referral system.
3. An attempt will be made to undertake outreach activities intended to encourage participation by Section 3 residents in training and employment opportunities, to include but not be limited to utilizing the referral established by the City of Houston, the Texas Employment Commission and Houston Works.

Affiant's Signature: _____ Address: _____ Affiant's
 Title: _____ Telephone: _____ Affiant's Company
 Name: _____

Subscribed and sworn to under oath before me this ____ day of _____, 200 ____.

My commission expires:

NOTARY: _____

HUD-4238-CD-1

(66-6)

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
CERTIFICATION OF BIDDER REGARDING EXECUTIVE ORDER 11246**

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION OF BIDDER

Bidder's Name: _____

Address: _____

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
Yes ____ No ____ Not Required ____
2. Compliance reports were required to be filled in connection with such contract.
Yes ____ No ____
3. Bidder has filled all compliance reports due under applicable instructions, including SF-100.
Yes ____ No ____
4. If answer to item is "No", please explain in detail on reverse side of this certification.

Certification - The information above is true and complete to the best of my knowledge and belief.

NAME AND TITLE OF SIGNER (PLEASE TYPE)

SIGNATURE

DATE

May 28, 1996

Bidder Certification

**CITY OF HOUSTON
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
SECTION 3 COMPLIANCE**

First Source Hiring Agreement

This agreement, is entered into this _____ day of ____, 200__, by and between the City of Houston and, hereinafter referred to as the "City", and hereinafter referred to the "Contractor", in connection with work to be performed in relation to the City's HUD-assisted project entitled, hereinafter referred to as the "project".

Whereas, HUD has promulgated certain regulations to implement Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 U.S.C. 1701u)(Section 3), which regulations were published in the Federal Register June 30, 1994 at page 33865, hereinafter referred to as the "Section 3 regulations"; and

Whereas, the purpose of Section 3 regulations is to ensure that employment and other economic opportunities generated by Section 3 covered assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, and to business concerns which provide economic opportunities to such persons.

Whereas, HUD has set forth numerical employment, and contracting goals to be achieved by all Community Development recipients of Section 3 covered assistance and by other recipients of such assistance in which HUD's share exceeds \$200,000 per project and by those Contractors whose share of such projects exceeds \$100,000; and

Whereas, the numerical goal so established by HUD applicable to the Project is set forth below; and

Whereas, recipients of Section 3-covered assistance and their contractors can demonstrate compliance with the Section 3 regulations by committing to employ Section 3 eligible persons as the applicable percentage of the aggregate number of new hires during the time period involved in the Section 3-covered project; and

Whereas, the City and the Contractor are desirous of being in compliance with the Section 3 regulations as they relate to the Project;

Now Therefore, the City and the Contractor agree as follows:

1. The Contractor and any of its subcontractors shall supply the City with a list of all full-time employees currently employed, indicating which, if any, of said employees were hired within the past three years and were also low or very low-income persons when so hired;

2. The Contractor and any of its subcontractors shall provide a listing of any and all positions for which new hires are expected to be required as a result of the Project;
3. The Contractor and any of its contractors will, to the greatest extent feasible, endeavor to hire 30% percent of the new hires generated by the Project from the following list of Section 3-eligible groups, in the order of priority listed:
 - A. Section 3 residents of service area or neighborhood;
 - B. Youth build participants;
 - C. Homeless projects; Homeless persons; and
 - D. Other Section 3 residents.
4. The Contractor and any of its subcontractors will be encouraged to make new hires from the list of Section 3-eligible groups in Paragraph 3 above for any and all other projects assisted with Federal funding, whether or not such project is subject to the Section 3 regulations;
5. The Contractor and any of its subcontractors shall accept referrals of Section 3-eligible persons from the City.

Provided, however, that nothing in this agreement is to be construed requiring any party hereto, or its subcontractors, to hire any person or persons who are unqualified to or incapable of carrying out the work required of any such new hires.

Witness our hands and seals on the date first written above:

The City of Houston
Department of Housing & Community Development

by _____
its Director

Witness: _____

Contractors Name:

by _____
its Owner/President

Witness: _____

CONTRACTOR WORKFORCE ANALYSIS FORM
ESTIMATED PROJECT WORK FORCE BREAKDOWN

Job Category	Total Estimated Positions Needed for Project	No. Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled w/Section 3 Residents
Officer/Supervisor				
Professionals				
Technical				
Hsg Sales/Rent				
Office/Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				

EMPLOYMENT CERTIFICATION (make additional copies of this form if necessary)

The Company hereby certifies that the above table represents the appropriate number of employee's positions required in the execution of project _____ and also represents the number of Section 3 service area residents that the company proposes to employ.

The Company certifies that it will make a good faith effort to employ the number of lower income employees stated utilizing such community-based organizations and service agencies as the Texas Employment Commission and Houston Works.

Company: _____

Title: _____

By: _____

Date: _____

SUBCONTRACTOR WORKFORCE ANALYSIS FORM

ESTIMATED PROJECT WORK FORCE BREAKDOWN

Job Category	Total Estimated Positions Needed for Project	No. Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled w/Section 3 Residents
Officer/Supervisor				
Professionals				
Technical				
Hsg Sales/Rent				
Office/Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				

EMPLOYMENT CERTIFICATION (make additional copies of this form if necessary)

The Company hereby certifies that the above table represents the appropriate number of employee's positions required in the execution of project _____ and also represents the number of Section 3 service area residents that the company proposes to employ.

The Company certifies that it will make a good faith effort to employ the number of lower income employees stated utilizing such community-based organizations and service agencies as the Texas Employment Commission and Houston Works.

Company: _____

Date: _____

By: _____

Title: _____

(NOTE: INCLUDE "SUBCONTRACTOR WORKFORCE ANALYSIS FORM 2")

May 28, 1996

Form 3

**CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT
MONITORING AND EVALUATION DIVISION
CONTRACTOR SECTION 3 COMPLIANCE FORM**

CONTRACTOR NAME _____
ADDRESS _____
CONTACT PERSON _____
PHONE NUMBER _____

PROJECT NAME _____
CONTRACT AMOUNT _____
DATE REPORT SUBMITTED _____

Racial/Ethnic Codes:
1-White American
2-Black American
3-Native American
4-Hispanic American
5-Asian Pacific American
6-Hasidic Jews (For Part II only)

Part I: Employment and Training (*Include New Hires In columns C and D.)

A Job Category	B Number of New Hires: TOTAL / Section 3	C Total Number of staff hours for Section 3 Employees and Trainees *	D Number of Section 3 Employees and Trainees*	E Radical/Ethnic Code(s) For Columns D and E, show Numbers					
				1	2	3	4	5	6
Professionals									
Technicians									
Office/Clerical									
Construction by Trade (List Trade:									
Trade:									
Trade:									
Trade:									
Trade::									
Other:(List)									

Part II Section A 3 Business

A Type of Contracts	B Total dollar amount awarded on project	C Total dollar amount awarded to Section 3	D Total number of Section 3 Business receiving contract	E Radical/Ethnic Code(s) For Columns D and E, show Numbers					
				1	2	3	4	5	6
Construction									
Non-Construction									

**CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT
MONITORING AND EVALUATION DIVISION
SUBCONTRACTOR SECTION 3 COMPLIANCE FORM**

CONTRACTOR NAME _____
ADDRESS _____
CONTACT PERSON _____
PHONE NUMBER _____

PROJECT NAME _____
CONTRACT AMOUNT _____
DATE REPORT SUBMITTED _____

Racial/Ethnic Codes:
1-White American
2-Black American
3-Native American
4-Hispanic American
5-Asian Pacific American
6-Hasidic Jews (For Part II only)

Part 1: Employment and Training (*Include New Hires In columns C and D.)

A Job Category	B Number of New Hires: TOTAL / Section 3	C Total Number of staff hours for Section 3 Employees and Trainees *	D Number of Section 3 Employees and Trainees*	E Radical/Ethnic Code(s) For Columns D and E, show Numbers 1 2 3 4 5						
Professionals										
Technicians										
Office/Clerical										
Construction by Trade (List Trade:										
Trade:										
Trade:										
Trade:										
Trade::										
Other:(List)										

Part II Section A 3 Business

A Type of Contracts	B Total dollar amount awarded on project	C Total dollar amount awarded to Section 3	D Total number of Section 3 Business receiving contract	E Radical/Ethnic Code(s) For Columns D and E, show Numbers 1 2 3 4 5 6						
Construction										
Non-Construction										

CITY OF HOUSTON
2005 Annual and Monthly Income Limits For
Extremely Low-Income, Very Low-Income and Low-Income Families
Under the Housing Act of 1937

Updated February 2005

Persons in Household	30% of Median "Extremely Low"		50% of Median "Very Low-Income"		80% of Median "Low-Income"	
	Annual Income	Monthly Income	Annual Income	Monthly Income	Annual Income	Monthly Income
1	\$12,800	\$1,066	\$21,350	\$1,779	\$34,150	\$2,845
2	14,650	1,220	24,400	2,033	39,050	3,254
3	16,450	1,370	27,450	2,287	43,900	3,658
4	18,300	1,525	30,500	2,541	48,800	4,066
5	19,750	1,645	32,950	2,745	52,700	4,391
6	21,250	1,770	35,400	2,950	56,600	4,716
7	22,700	1,891	37,800	3,150	60,500	5,041
8	24,150	2,012	40,250	3,354	64,400	5,366

FY 2004 Median Family Income \$61,000

* Definitions (Source 24 CFR 570.3) :

1. "Low and moderate income household" or "lower income household" means a household having an income equal to or less than the Section 8 lower income limits established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.
2. "Low and moderate income person" or "lower income person" means a member of a family having an income equal to or less than the Section 8 lower income limits established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

ATTACHMENT II

ATTACHMENT II-A

MWBE Subcontract Terms

Contractor shall insure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled, "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than fifty (50%) percent of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("Director").

2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (i) audits of the books and records of the subcontractor and (ii) inspections of all places where work is to be undertaken in connection with the subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitation.

3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

4. As concluded by the parties to this Contract on the advice of the counsel and as evidenced by the signatures of the parties and their respective attorneys any controversy between the parties to this Contract involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one (1) party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act (Art. 224 et. seq. V.A.T.S. - "the Act"). Arbitration shall be conducted according to the following procedures:

- a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration;
- b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration as set out above;
- c. The parties shall select an arbitrator from a revolving list of certified arbitrators provided by the Director. If the parties are unable to agree on an arbitrator, each party may strike one name from the list and the first name immediately following the last strike shall be the one designated to hear the dispute. Each party shall deposit with the Director one-half (1/2) of the fee estimated by the arbitrator for all proceedings required;
- d. The arbitrator shall have all powers set out under the Act and shall hear testimony, consider evidence and render a written decision within three (3) days of submission of the dispute. As part of the decision, the arbitrator shall determine which party or parties shall pay all or part of the arbitrator's fee; and
- e. The decision of the arbitrator shall be final as provided in the Act and upon payment of the arbitrator's fees, the Director shall return that part of the deposit of any party in excess of the amount the party was ordered to pay.

CERTIFICATES

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

Project Name _____

Date _____

Location _____

Project No. _____

(I) (We) hereby certify that (I am) (we are) (the prime contractor) (a subcontractor) for _____ (Specify "General Construction," "Plumbing," "Roofing," etc.) in connection with construction of the above-mentioned Project, and that (I)(we) have appointed * _____, whose signature appears below, to supervise the payment of (my)(our) employees beginning _____, 20__; 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 Statue which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the _____ a new certificate appointing some other person for the purposes herein above stated.

* _____
(Identifying Signature of Appointee)

Attest (if required):

(Name of Firm or Corporation)

(Signature)

By: _____
(Signature)

(Title)

(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 the start of construction and submitted promptly. 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.

CERTIFICATION REGARDING LOBBYING

[For Contracts, Grants, Loans, and Cooperative Agreements]

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

(3) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

CONTRACTOR:

Date

By: _____

Name: _____

Title: _____

CERTIFICATION REGARDING

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The prospective 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, State or local department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

Type Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

REQUEST FOR CONTRACTOR CLEARANCE

THIS FORM MUST BE FORWARDED OR FAXED TO THE CITY OF HOUSTON AT THE ADDRESS BELOW BY, OR ON BEHALF OF, THE APPARENT LOW BIDDER AS SOON AS BIDS ARE TABULATED.

Date: _____

HUD Project No.: _____

Project Name & Address: _____

Name of Contractor: _____

Federal ID Number: _____

Address: _____

(Include Zip Code)

Telephone Number: _____

____ Sole Proprietorship: _____

(List Sole Owner)

____ Partnership: _____

(List All Partners)

____ Corporation: _____

(Names of All Principals)

and their Titles: _____

Pirooz Farhoomand
City of Houston
Housing and Community Development Department
P. O. Box 1562
Houston, TX 77251
Phone: (713) 868-8467
Fax: (713) 868-8364

Approved: _____

Pirooz Farhoomand

Date: _____