

**CITY OF NAPLES, FLORIDA**  
**AGREEMENT**  
**(PROFESSIONAL SERVICES SURVEY – DESIGN - ENGINEERING)**

**Bid/Proposal No.**     **16-050 (FY17)**

**Clerk Tracking No.**    2017-00039

**Project Name:**        **5<sup>th</sup> Ave – N Sidewalk Survey, Design and Engineering**

THIS AGREEMENT (the "Agreement") is made and entered into this 30<sup>th</sup> day of **March 2017**, by and between the **City of Naples**, a Florida municipal corporation, (the "CITY") and **Johnson Engineering, Inc.**, a Florida Corporation, authorized to do business in the State of Florida, whose business address is: 2350 Stanford Court; Naples, Florida 34112 (the "CONSULTANT").

WHEREAS, the CITY desires to obtain the services of the CONSULTANT concerning certain services specified in this Agreement (referred to as the "Project"); and

WHEREAS, the CONSULTANT has submitted a proposal for provision of those services; and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

**ARTICLE ONE**  
**CONSULTANT'S RESPONSIBILITY**

1.1. The Services to be performed by the CONSULTANT are generally described as **5<sup>th</sup> Ave – N Sidewalk Survey, Design and Engineering** and may be more fully described in the Scope of Services, attached as **EXHIBIT A** and made a part of this Agreement.

1.2. The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.3. The CONSULTANT agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, registration, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. The CONSULTANT agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified licensed professional to serve as the CONSULTANT's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating

and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONSULTANT has represented to the CITY that it has expertise in the type of professional services that will be required for the Project. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by the CONSULTANT. In the event of any conflicts in these requirements, the CONSULTANT shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONSULTANT's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by the CONSULTANT hereunder, and the CONSULTANT shall require all of its employees, agents, sub-consultants and sub-contractors to comply with the provisions of this paragraph. However, the CONSULTANT shall comply with the Florida Public Records laws including those requirements set out in ARTICLE FIVE, below.

1.7 The CONSULTANT agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONSULTANT violates the provisions of this paragraph, the CONSULTANT shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8 The CONSULTANT agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONSULTANT agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONSULTANT's contractual relationship with the CITY for the special gain or benefit of the CONSULTANT or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO CITY'S RESPONSIBILITIES**

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define the CITY's policies and decisions with respect to the CONSULTANT's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the

CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

(a) The scope of services to be provided and performed by the CONSULTANT;

(b) The time the CONSULTANT is obligated to commence and complete all such services;  
or

(c) The amount of compensation the CITY is obligated or committed to pay the CONSULTANT.

Any such modifications or changes shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.

2.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for the CONSULTANT to enter the Project site to perform the services to be provided by the CONSULTANT under this Agreement; and

(c) Provide notice to the CONSULTANT of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONSULTANT hereunder.

2.3. The CONSULTANT acknowledges that access to the Project Site, to be arranged by the CITY for the CONSULTANT, may be provided during times that are not the normal business hours of the CONSULTANT.

### ARTICLE THREE TIME

3.1. Services to be rendered by the CONSULTANT shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project and **shall be performed and completed in 60-Days from the Notice to Proceed with an anticipated completion date of May 31, 2017 and with a 30-Day Close-out time frame.** Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONSULTANT be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONSULTANT, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONSULTANT shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONSULTANT may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the CONSULTANT's services from any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve the CONSULTANT of its duty to perform or

give rise to any right to damages or additional compensation from the CITY. The CONSULTANT's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

3.4. Should the CONSULTANT fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONSULTANT's performance is or will shortly be back on schedule.

#### **ARTICLE FOUR COMPENSATION**

4.1. The total compensation to be paid the CONSULTANT by the CITY for all Services is not to exceed **\$34,380.00** and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **EXHIBIT B** and made a part of this Agreement.

#### **ARTICLE FIVE MAINTENANCE OF RECORDS**

5.1. The CONSULTANT will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONSULTANT for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If the CONSULTANT desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

#### **5.2 119.0701 F.S. CONTACT INFORMATION FOR CITY OF NAPLES' CUSTODIAN OF PUBLIC RECORDS, CITY CLERK'S OFFICE**

**If the CONSULTANT has questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT'S duty to provide public records relating to this contract, contact the City of Naples' Custodian of Public records, the City Clerk at Telephone: 239-213-1015, Email:PublicRecordsRequests@naplesgov.com; Address: 735 8<sup>th</sup> Street S.; Naples, Florida 34102. Mailing address: same as street address.**

#### **5.3 The CONSULTANT shall:**

1. Keep and maintain public records required by the CITY to perform the service.
2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed the cost provided in this chapter 119.0701 F.S. or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONSULTANT does not transfer the records to the CITY.

4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONSULTANT or keep and maintain public records required by the CITY to perform the service. If the CONSULTANT transfers all public records to the CITY upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.

#### **ARTICLE SIX INDEMNIFICATION**

6.1. The CONSULTANT agrees to indemnify and hold harmless the CITY from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT and persons employer or utilized by the CONSULTANT in the performance of the Contract.

#### **ARTICLE SEVEN INSURANCE**

7.1. The CONSULTANT shall obtain and carry, at all times during its performance under this Agreement, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **EXHIBIT C** and made a part of this Agreement.

7.2. In addition to the General Insurance Requirements in Exhibit C the CONSULTANT shall obtain and maintain Professional Liability Insurance to insure its legal liability for claims arising out of the performance of professional services under this Agreement. CONSULTANT waives its right of recovery against OWNER as to any claims under this insurance. Such insurance shall have limits of not less than \$1,000,000 each claim and in the aggregate.

#### **ARTICLE EIGHT SERVICES BY CONSULTANT'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by the CONSULTANT's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONSULTANT, as independent CONSULTANT or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other

person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

## **ARTICLE NINE WAIVER OF CLAIMS**

9.1. The CONSULTANT's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONSULTANT as unsettled at the time of the final payment. Neither the acceptance of the CONSULTANT's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONSULTANT.

## **ARTICLE TEN TERMINATION OR SUSPENSION**

10.1. The CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONSULTANT or by any of the CONSULTANT's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONSULTANT at least 3 calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONSULTANT was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONSULTANT provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONSULTANT's remedies against the CITY shall be the same as and limited to those afforded the CONSULTANT under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONSULTANT. In the event of such termination for convenience, the CONSULTANT's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONSULTANT that are directly attributable to the termination, but the CONSULTANT shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

## **ARTICLE ELEVEN CONFLICT OF INTEREST**

11.1. The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONSULTANT further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE TWELVE  
MODIFICATION**

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**ARTICLE THIRTEEN  
NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the CITY shall be in writing and shall be delivered by hand or by (USPS) United States Postal Service, first class mail service, postage prepaid, return receipt requested, or as otherwise agreed upon and addressed to the following CITY's address of record:

City of Naples  
735 Eighth Street South  
Naples, Florida 34102-3796  
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONSULTANT shall be made in writing and shall be delivered by hand or by the (USPS) United States Postal Service, first class mail service, postage prepaid, return receipt requested, or as agreed upon and addressed to the following CONSULTANT's address of record:

Johnson Engineering, Inc.  
2350 Stanford Court  
Naples, Florida 34112  
Attention: **Michael Dickey**, P.E. / Vice President  
FEI/EIN Number:      On File              State (FL)

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE FOURTEEN  
MISCELLANEOUS**

14.1. The CONSULTANT assumes toward the CITY a duty of care commensurate with that which is imposed upon persons or firms in consultant's profession. CONSULTANT will make reasonable efforts to ensure that its employees and agents maintain a professional demeanor and that the work area is compliant with CITY property maintenance and Project standards.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONSULTANT without the prior written consent of the CITY.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

14.7. The CONSULTANT shall comply fully with all provisions of state and federal law, including without limitation all provisions of the Immigration Reform and Control Act of 1986 ("IRCA") as amended, as well as all related immigration laws, rules, and regulations pertaining to proper employee work authorization in the United States. The CONSULTANT shall execute the Certification of Compliance with Immigration Laws, attached hereto as **EXHIBIT D**.

14.8 To the extent that any provision in the Specifications or any other Contract Documents pertaining to this Project conflict with any provision of this Agreement, this Agreement controls.

14.9 Dispute Resolution. Disputes under this Agreement shall be resolved through mutual consultation between the parties within 14 days after notice; and failing resolution through mutual consultation, through mediation within 30 days thereafter; and failing mediation, through Arbitration under the Florida Arbitration Code, by a single arbitrator. If the parties cannot agree on a mediator or arbitrator, within 14 days of failure of the previous method, they shall request the Chief Judge of the 20<sup>th</sup> Judicial Circuit to appoint a mediator, or an arbitrator, as the case may be. Time periods are waivable by mutual agreement of the parties, but shall not exceed 90 days for completion of the processes described herein, unless by mutual agreement. Costs of the mediator or arbitrator shall be shared equally.

14.10 Attorneys' fees. Except as otherwise provided herein, each party shall be responsible for its own attorneys' fees.

#### **ARTICLE FIFTEEN APPLICABLE LAW**

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

**END OF ARTICLE PAGE**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

CITY:

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation

By:   
Patricia L. Rambosk, City Clerk

By:   
A. William Moss, City Manager

Approved as to form  
and legal sufficiency:

By:   
Robert D. Pritt, City Attorney

CONSULTANT:

JOHNSON ENGINEERING, INC.  
2350 Stanford Court  
Naples, Florida 34112  
Attention: **Michael Dickey**, P.E. / Vice President

  
Witness

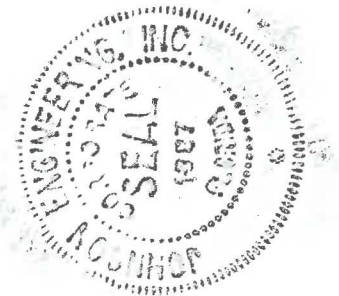
By: 

Lisa J. BANOHMAN  
Witness Printed Name

Printed Name: Michael S. Dickey  
Title: Vice President

FEI/EIN Number: On File  
A Florida Corporation (FL)

(CORPORATE SEAL)



**EXHIBIT A**

**SCOPE OF SERVICES**

**The Scope of Services to be provided under this Agreement are included in Attachment A-1 which is attached and made a part of this Agreement and those set out in the Bid, any Addendum(s) Issued and Vendor's Submittal of Request For Proposal No.16-050, titled 5<sup>th</sup> Ave – N Sidewalk Survey, Design and Engineering herein referenced and made a part of this Agreement.**

**END OF EXHIBIT A**

**EXHIBIT "A"****SCOPE OF PROFESSIONAL SERVICES FOR  
5<sup>TH</sup> AVENUE – NORTH SIDEWALK SURVEY, DESIGN, AND ENGINEERING****March 2017**

The intent of this project is to provide topographic survey, design, and construction plans for the construction of a 5 foot wide pedestrian concrete sidewalk and restored driveway aprons, within public right-of-way, on the north side of 5th Avenue North from Goodlette Frank Road going east to the Anthony Park pathway for the City of Naples (CITY).

This scope of services details those services provided by Johnson Engineering, Inc. (CONSULTANT).

**GENERAL**

CONSULTANT shall provide and perform the following professional services, which shall constitute the general scope of Basic Services under the covenants, terms, and provisions of the Professional Services Agreement.

CONSULTANT shall conduct surveys, prepare construction plans, specifications, and cost estimating services detailed herein, for the following sidewalk project:

**TASKS**

In accordance with the general scope of Basic Services stated herein, the CONSULTANT shall perform services necessary to complete the following tasks:

**TASK INDEX**

- 1.0 Survey
- 2.0 Engineering Design (signed and sealed)

**TASK 1 SURVEY**

CONSULTANT shall perform the following survey services:

- CONSULTANT shall research the public records available on the Collier County Property Appraiser and Collier County Clerk of Court websites to locate parcel deeds and recorded plats pertinent for the delineation of 5th Avenue North from Goodlette Frank Road going east to the Anthony Park pathway, as well as identify property owners and lots.
- CONSULTANT shall perform a field survey to locate, verify or establish right of way lines on north side of the existing roadway edge of pavement to the northern right-of-way line on north side of 5th Avenue North from Goodlette Frank Road going east to the Anthony Park pathway.
- CONSULTANT shall perform a field survey to provide horizontal and vertical data of visible above ground improvements and visible above ground utilities within the project limits and shall measure cross sections at 50' intervals on the north side of the existing roadway edge of pavement to the

northern right-of-way line on the north side of 5th Avenue North from Goodlette Frank Road going east to the Anthony Park pathway.

- CONSULTANT shall prepare a survey base map delineating property boundary lines and right-of-way lines.
- CONSULTANT shall map the horizontal and vertical data collected for visible above ground improvements and visible above ground utilities within the project limits.

The horizontal data will be State Plane Coordinate, Florida East Zone, North American Datum of 1983 (2011 adjustment), feet. The vertical data will be North American Vertical Datum 1988 (NAVD88) feet.

The location of underground improvements or existing underground utilities is not covered under this scope of services.

## **TASK 2 ENGINEERING DESIGN**

CONSULTANT shall analyze field conditions and determine the alignment for the proposed sidewalk. The sidewalk shall be designed in accordance with current Florida Department of Transportation (FDOT) Manual of Uniform Minimum Standards (MUMS aka "Florida Greenbook") criteria. Design will include approximately 265 linear feet of swale regrading from 14<sup>th</sup> Street North to Anthony Park. The final alignment and typical section for the sidewalk improvements shall be approved by the CITY prior to detailed plan production.

It is assumed an environmental resource permit (ERP) from the South Florida Water Management District (SFWMD) is not required as sidewalk projects are typically exempt and surface water drainage impacts are expected to be minimal. Should additional improvements be included necessitating a SFWMD permit, that service shall be considered additional and negotiated at a later date.

CONSULTANT shall prepare construction plans denoting the elevation, 50' cross-section and alignment of the sidewalk and associated improvements, including driveway aprons. A 5 foot wide sidewalk is anticipated. The construction plans shall be prepared in general accordance with the FDOT Plans Preparation Manual (PPM) and will include the following plan sheets:

- Key sheet
- Summary of pay items
- General notes
- 50' cross-sections
- Project layout
- Survey control
- Plan and profile sheets
- Drainage details (if necessary)
- Erosion control
- Signing and pavement marking sheets

CONSULTANT will prepare the final bid documents and specifications associated with the project. The document will be reviewed by the CITY.

Plan submittals will be made at an initial and final phase for review and comment by CITY. For the initial and final submittals, the deliverables shall include:

- Five (5) sets of 11"x17" plans

- One .pdf file of the plans provided on a CD
- CAD drawing (.dwg files)
- Other documents as specified in each task

CONSULTANT will prepare an engineer's opinion of probable cost with the initial and final submittals. Cost shall be determined based on FDOT cost history and best available local construction bid costs.

CONSULTANT shall identify potential utility agency owners (UAO) within the project limits and request copies of any record drawings. Following the initial plan submittal to the CITY, the CONSULTANT shall send the proposed construction plans to the UAOs requesting any utility adjustment plans in "Red Green Brown" (RGB) format. Any existing utility locations and proposed utility adjustments provided by the UAOs shall be depicted on the sidewalk plan sheets. CONSULTANT shall coordinate and attend one (1) utility coordination meeting. All utility relocations shall be designed and constructed by others. Please note, the CONSULTANT makes no representation on the accuracy of information provided by the UAOs and cannot guarantee their prompt cooperation.

#### **EXCLUSIONS TO THE CONTRACT**

- South Florida Water Management District permitting
- Street lighting design
- Post design services
- Utility design
- Pedestrian signal design
- Construction staking or collection of as-built data
- Construction engineering inspection (CEI)

Name of Project: 5th Ave - N. Sidewalk Survey and Design  
 Location: City of Naples, Collier County  
 Project No: TBD  
 Bid No.: TBD

Consultant Name: Johnson Engineering Inc.  
 Consultant No.: TBD  
 Date: 3/23/17  
 Estimator: JJH

Staff Classification	Engineer VII	Engineer VI	Engineer V	Surveyor and Mapper IV	Two-Man Field Party	Engineer Intern III	Technician IV							SH By Activity	Salary Cost By Activity	Average Rate Per Task
Task	\$160.00	\$150.00	\$135.00	\$150.00	\$135.00	\$115.00	\$100.00									
1) Survey	0	0	0	12	40	0	16	0	0	0	0	0	0	68	\$8,800	\$129.41
2) Engineering Design	0	8	52	0	0	64	100	0	0	0	0	0	0	224	\$25,580	\$114.20
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	#DIV/0!
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	#DIV/0!
<b>Total Staff Hours</b>	0	8	52	12	40	64	116	0	0	0	0	0	292			
<b>Total Staff Cost</b>	\$0.00	\$1,200.00	\$7,020.00	\$1,800.00	\$5,400.00	\$7,360.00	\$11,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			\$34,380.00

Check = \$34,380.00

NOTES:

SUBTOTAL ESTIMATED FEE: \$34,380.00  
 REIMBURSABLE EXPENSES: \$0.00  
**GRAND TOTAL FEE: \$34,380.00**

**EXHIBIT B**

**BASIS OF COMPENSATION**

As consideration for providing the Services as set forth in the Agreement, the CITY agrees to pay, and the CONSULTANT agrees to accept payment on a monthly basis on the percentage of work completed and as indicated in **Exhibit B which is attached and made a part of this Agreement. Note.** An initial payment by the CITY will be made on/before May 8, 2017 to meet HUD timeliness and a final invoice after project completion and final inspection.

**EXHIBIT "B"**

**COMPENSATION AND METHOD OF PAYMENT FOR  
5<sup>TH</sup> AVENUE – NORTH SIDEWALK SURVEY, DESIGN, AND ENGINEERING**

For services provided and performed by CONSULTANT for providing and performing the Task(s) set forth and enumerated in Exhibit "A" entitled "Scope of Professional Services", the CITY

<b>TASK</b>	<b>ITEM</b>	<b>AMOUNT</b>	<b>FEE TYPE (LS;T&amp;M; NTE)</b>
1	SURVEY	\$8,800.00	Lump Sum
2	GENERAL DESIGN	\$25,580.00	Lump Sum
	<b>TOTAL COMPENSATION FOR CONSULTANT'S SERVICES</b>	<b>\$34,380</b>	<b>Lump Sum</b>

Retainage: Not applicable to this Agreement.

**END OF EXHIBIT B**

## EXHIBIT C

### GENERAL INSURANCE REQUIREMENTS

The CONSULTANT shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the CONSULTANT allow any sub-consultant to commence work until all similar insurance required of the sub-consultant as also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly authorized to do business in the state of said Contract.

The CONSULTANT shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any sub-consultant similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the CONSULTANT's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the CONSULTANT shall provide, and shall cause each sub-consultant to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

Except for Worker's Compensation coverage, or unless waived by the City in writing, the CONSULTANT shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any sub-consultant performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a sub-consultant, or by anyone directly or indirectly employed by either of them. The CONSULTANT shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the CONSULTANT.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

Except for the Worker's Compensation and Professional Liability, the City of Naples must be named as Additional Insured on the insurance certificate and the following must also be stated on the certificate. "These coverage's are primary to all other coverage's the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. The Certificate Holder shall read as follows:

City of Naples  
Attention: City Manager  
735 Eighth Street South  
Naples, Florida 34102

No City Division, Department, or individual name should appear on the Certificate.  
No other format will be acceptable, without prior approval of the City.

The Certificate must state the bid number and title. When using the ACORD 25 – Certificate of Insurance--only the most current version will be accepted.

The City of Naples requires a copy of a cancellation notice in the event the policy is cancelled. The City of Naples shall be expressly endorsed onto the policy as a cancellation notice recipient.

*[If other insurance or insurance requirements or any waivers, attach as Exhibit C-1through C-\_\_ ]*



**EXHIBIT D**

**CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS**

The undersigned is the **Vice President of the Johnson Engineering, Inc.**, company ("the CONSULTANT"), and hereby certifies to the following:

1. The CONSULTANT is in full compliance with all provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as all related immigration laws, rules, regulations pertaining to proper employee work authorization in the United States.

2. The undersigned has verified that the CONSULTANT has obtained and maintains on file, and will continue to obtain and maintain on file, all documentation required by law, including but not limited to, Form I-9, Employment Eligibility Verification, for all persons employed by or working for the CONSULTANT in any capacity on any project for the City of Naples (CITY). All such persons have provided evidence of identity and eligibility to work to the CONSULTANT in accordance with the IRCA and related law. The undersigned hereby affirms that no person has been or will be employed by the CONSULTANT to work on projects for the CITY who is not authorized to work under law. The undersigned further affirms that the CONSULTANT's files will be updated by written notice any time that additional employees work on projects for the CITY.

3. The CONSULTANT will have its consultants, sub-consultants, suppliers and vendors who are involved in projects for the CITY to sign a written acknowledgment that they too are in compliance with immigration law. It is understood that failure to do so could result in the CONSULTANT being liable for any violation of the law by such third parties.

4. The CONSULTANT will fully cooperate with and have its consultants, sub-consultants, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in the United States.

5. The undersigned, on behalf of the CONSULTANT, acknowledges that this Certification may be relied upon by the CITY, its officers, directors, employees, and affiliates or related persons and entities.

6. If it is found that the CONSULTANT has not complied with the laws pertaining to proper employment authorization, and any legal and administrative action ensues against the CITY, the CONSULTANT will indemnify, defend and hold the CITY harmless along with their officers, directors, employees, and affiliated or related persons and entities.

7. The CONSULTANT acknowledges that the CITY by their authorized representatives shall have the right, at any time, upon 24 hours' notice, to examine the CONSULTANTS's books and records to confirm that the CONSULTANT is in compliance with the terms of this certification.

Executed this 29 day of March, 2017.

By: 

**EXHIBIT E**

**HOUSING URBAN DEVELOPMENT (HUD)**

**SUPPLEMENTAL CONDITIONS**

**The Supplemental Conditions to this Agreement are included in Attachment E-1 which is attached and made a part of this Agreement.**

**END OF EXHIBIT E**

## Housing Urban Development (HUD) Supplemental Conditions

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern.

### Flow Down of Terms and Conditions from the Grant Agreement

**Subcontracts:** If the vendor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be forwarded to the Department for review and approval. The vendor agrees to include in the subcontract that (1) the subcontractors is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The recipient shall document in each invoice submittal the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

<input checked="" type="checkbox"/>	1. Termination (Cause and Convenience)
<input checked="" type="checkbox"/>	2. Access to Records
<input checked="" type="checkbox"/>	3. Retention of Records
<input checked="" type="checkbox"/>	4. Remedies
<input checked="" type="checkbox"/>	5. Environmental Compliance (Clean Air Act and Clean Water Act)
<input checked="" type="checkbox"/>	6. Energy Efficiency
<input checked="" type="checkbox"/>	7. Equal Opportunity Provisions
<input checked="" type="checkbox"/>	8. Section 3
<input checked="" type="checkbox"/>	9. Conflict of Interest
<input checked="" type="checkbox"/>	10. Utilization of Minority and Women's Businesses
<input type="checkbox"/>	11. Federal Labor Standards Provisions (Davis Bacon, Copeland, and Contract Work Hours Act)
<input type="checkbox"/>	12. Guidance to Contractor for Compliance With Labor Standard Provisions
<input checked="" type="checkbox"/>	13. Lobbying Prohibition
<input checked="" type="checkbox"/>	14. Debarment
<input checked="" type="checkbox"/>	15. Historic Preservation
<input checked="" type="checkbox"/>	16. Record Keeping and Documentation
<input checked="" type="checkbox"/>	17. Grantee Recognition (Advertisement)
<input checked="" type="checkbox"/>	18. Copyright and Patent Rights
<input checked="" type="checkbox"/>	19. Religious Organizations
<input checked="" type="checkbox"/>	20. Recycled Products

## **Housing Urban Development (HUD) Supplemental Conditions**

### **1. TERMINATION FOR CAUSE AND / OR CONVENIENCE**

A. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

- (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and
- (2) an opportunity for consultation with the terminating party prior to termination.

B. This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in l(a) above.

C. If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but

- (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and
- (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor's default.

If termination for convenience is effected by the local government, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice. For any termination, the equitable adjustment shall provide for payment to the contractor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.

D. Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.

E. Upon termination, the local government may take over the work and may award another party a contract to complete the work described in this contract.

F. If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph(c) above.

### **2. ACCESS TO RECORDS**

The local government, the Florida Department of Economic Opportunity, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

## **Housing Urban Development (HUD) Supplemental Conditions**

### **3. RETENTION OF RECORDS**

The contractor shall retain all records relating to this contract for six years after the local government makes final payment and all other pending matters are closed.

### **4. REMEDIES**

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

### **5. ENVIRONMENTAL COMPLIANCE**

If this contract exceeds \$ 100,000, the contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The contractor shall include this clause in any subcontracts over \$100,000.

### **6. ENERGY EFFICIENCY**

The contractor shall comply with any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

### **7. SPECIAL EQUAL OPPORTUNITY PROVISIONS**

#### **A. Activities and Contracts Not Subject to Executive Order 11246, as Amended**

(Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under.)

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

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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.

(2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer seeking forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants be considered without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) Contractors shall incorporate foregoing requirements in all subcontracts.

#### **B. Executive Order 11246, as Amended (through 2014), Section 202 Equal Opportunity Clause (Applicable to contracts/subcontracts above \$10,000)**

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or

## Housing Urban Development (HUD)

### Supplemental Conditions

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 contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information."

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the said labor union or worker's representatives of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and by the Rules, Regulations, and Relevant Orders of the Secretary of Labor.

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

## Housing Urban Development (HUD) Supplemental Conditions

interests of the United States.

### C. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000.)

(a) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Female participation: 6.9% (statewide)**

**Minority participation: 17.1% Collier County**

These goals are applicable to all Contractor's construction work (whether or not it is federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

The Contractor's compliance with Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established or the geographic area where the contract resulting from his solicitation is to be performed. The hours of minority and female employment or training must be substantially uniform throughout the length of the contract and in each trade the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the County within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

#### **Contact Information:**

Collier County Government—CHS  
3339 East Tamiami Trail E, STE 211  
Naples, Florida 34112  
Telephone 239-252-2273  
Fax 239-252-2638

**Section 3 Manager**  
Ms. Kristi Sonntag  
Telephone: 239-252-2486  
kristiSonntag@colliergov.net

<http://www.colliergov.net/your-government/divisions-a-e/community-and-human-services>

(d) As used in this Notice, and in the contract resulting from the solicitation, the "covered area" is the county in which the contract work is being undertaken.

## Housing Urban Development (HUD) Supplemental Conditions

### D.41 CFR 60-4.3 Equal Opportunity Clauses

(a). The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

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

1. As used in these specifications:

A. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

C. "Employer identification number" means the Federal Social Security number used on the Employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.

D. "Minority" includes:

(I) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(II) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central, or South American or other Spanish Culture or origin, regardless of race);

(III) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East,

Southeast Asia, the Indian Subcontinent, or the Pacific Island); and

(IV) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the



## Housing Urban Development (HUD) Supplemental Conditions

### Plan goals and timetables

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs (7) (A) through (P). of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensively as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person

## **Housing Urban Development (HUD) Supplemental Conditions**

or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.(b) above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female recruitment students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

## **Housing Urban Development (HUD) Supplemental Conditions**

(n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisors adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(q) become familiar with the HUD "Questions and Answers on Sexual Harassment under the Fair Housing Act." And request a copy from the County if needed.

4. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7) (a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7) (a) through (p) of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

5. A single goal for minorities and separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

6. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

7. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

8. The Contractor shall carry out sections and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

9. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensively as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its effort to ensure equal employment opportunity. If the Contractor fails to comply with the requirement of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

## **Housing Urban Development (HUD) Supplemental Conditions**

10. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

11. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance and upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **E. Certification of Non-Segregated Facilities (Contracts over \$10,000)**

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

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

The contractor further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

### **F. Civil Rights Act of 1964**

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### **G. Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the grounds of race, color, national original, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

## **8. "SECTION 3" Compliance in the Provision of Training, Employment and Business Opportunities**

## **Housing Urban Development (HUD) Supplemental Conditions**

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

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

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

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

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

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

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

### **I. Section 503 Handicapped (Contracts \$2,500 or Over)**

## Housing Urban Development (HUD)

### Supplemental Conditions

- (1) 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.
- (2) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (3) 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.
- (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the 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.
- (5) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or their 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.
- (6) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 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 subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

#### J. Age Discrimination in Employment Act of 1967, as Amended

It shall be unlawful for an employer-

- (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
- (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
- (3) to reduce the wage rate of any employee in order to comply with this chapter.

#### K. Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)

(1) Under Title II of the Genetic Information Nondiscrimination Act, it is illegal to discriminate against employees or applicants because of genetic information. Employers are prohibited from using genetic information in making employment decisions. GINA restricts employers and other entities covered by Title II (employment agencies, labor organizations and joint labor-management training and

## **Housing Urban Development (HUD) Supplemental Conditions**

apprenticeship programs - referred to as "covered entities") from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information. The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment.

(2) "Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

### **9. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS**

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

### **10. UTILIZATION OF MINORITY AND WOMEN FIRMS (M/WBE)**

The contractor shall take all necessary affirmative steps to assure that M/WBE firms are utilized when possible as suppliers and/or subcontractors, as applicable. Prior to contract award, the contractor shall document efforts to utilize M/WBE firms, including identifying what firms were solicited as suppliers and/or subcontractors, as applicable. Information regarding certified M/WBE firms can be obtained from:

- Florida Department of Management Services, Office of Supplier Diversity,
- Florida Department of Transportation (construction services, particularly highway),
- Minority Business Development Center in most major cities, and
- Local government M/WBE programs in many large counties and cities.

A firm recognized as an M/WBE by any of the above agencies is acceptable for the CDBG program.

### **11. FEDERAL LABOR STANDARDS PROVISIONS**

#### **(Davis-Bacon Act, Copeland Act, and Contract Works Hours & Safety Standards Act)**

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

A. (1) (a) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be

## **Housing Urban Development (HUD)**

### **Supplemental Conditions**

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.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(iii) In the event that 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 designed for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that the additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 215-0140.)



## Housing Urban Development (HUD) Supplemental Conditions

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

(c) 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.

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

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

(3) (a) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development 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

## **Housing Urban Development (HUD)**

### **Supplemental Conditions**

employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(b) (i) 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 owners, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U. S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(I) and that such information is correct and complete;

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

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

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

(iv) 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.

(c) The contractor or subcontractor shall make the records required under paragraph A(3)(a) 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 to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

## **Housing Urban Development (HUD)**

### **Supplemental Conditions**

(4) (a) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the 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. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(ii) Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for

## Housing Urban Development (HUD) Supplemental Conditions

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

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

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

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

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

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

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor (USDOL) 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 USDOL, or the employees or their representatives.

(10) (a) 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.

(b) 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.

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C.

1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U. S. C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of ... influencing in any way the action of such

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

(11) Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any

## **Housing Urban Development (HUD) Supplemental Conditions**

other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

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

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

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

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

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

C. Health and Safety

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

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (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 State 96).

## Housing Urban Development (HUD) Supplemental Conditions

(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.

### 12. GUIDANCE TO CONTRACTOR FOR COMPLIANCE WITH LABOR STANDARDS PROVISIONS

#### A. Contracts with Two Wage Decisions

If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification **must** be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

#### B. Complying with Minimum Hourly Amounts

(1) The minimum hourly amount due to a worker in each classification is the total of the amounts in the "Rates" and "Fringe Benefits" (if any) columns of the applicable wage decision.

(2) The contractor may satisfy this minimum hourly amount by any combination of cash and bona fide fringe benefits, regardless of the individual amounts reflected in the "Rates" and "Fringe Benefits" columns.

(3) A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.

(4) The hourly value of the fringe benefit is calculated by dividing the contractor's annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)

#### C. Overtime

For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and related acts only establish minimum rates and does not address overtime; the Contract Work Hours Act contains the overtime requirement and uses "basic rate of pay" as the base for calculation, not the minimum rates established by the Davis-Bacon and related acts.)

#### D. Deductions

Workers who have deductions, not required by law, from their pay must authorize these

## **Housing Urban Development (HUD) Supplemental Conditions**

deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.

### E. Classifications Not Included in the Wage Decision

If a classification not in the wage decision is required, please advise the owner's representative in writing and identify the job classification(s) required. In some instances, the State agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a minimum rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The USDOL must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

### F. Supervisory Personnel

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.

### G. Sole Proprietorships / Independent Contractors / Leased Workers

The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is subject to the labor standards provisions, including minimum wages and overtime. His status as "owner" is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

## Housing Urban Development (HUD) Supplemental Conditions

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

### H. Apprentices/Helpers

A worker may be classified as an apprentice **only if participating in a federal or state program**. Documentation of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of the journeyman rate. For Davis-Bacon Act purposes, the hourly rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the "trade" depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a "helper". As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.

### **13. LOBBY PROHIBITION**

(a) No funds or other resources received from the Department under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency. (b) The Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief;

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, 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 Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 Recipient shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying."

1. The Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



## **Housing Urban Development (HUD) Supplemental Conditions**

### **14. DEBARMENT**

Pursuant to 2 CFR 2424, all grantees are required to verify that any/all persons, contractors, consultants, businesses, sub-recipients, etc. that are conducting business with the grantee, including any city/county or the grantee itself, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction or in any proposal submitted in connection with the covered transaction. Verification will be checked through the excluded parties system list at [www.sam.gov](http://www.sam.gov).

**15. HISTORIC PRESERVATION** The Contractor shall comply with the historic preservation requirements of 24 CFR 58.17 and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and with all other environmental regulatory requirements. D. Historic Preservation: The contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470) and the procedures set forth in 36 CFR 800, Advisory Council on Historic reservation Procedures for Protection of Historical Properties.

### **16. RECORD KEEPING AND DOCUMENTATION**

The Recipient, its employees or agents, including all contractors, subcontractors or consultants to be paid from funds under this Agreement, shall allow access to its records at reasonable times to the Departments, its employees and agents. "Reasonable" shall ordinarily mean during normal business hours of 8am to 5pm local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Department.

1. The Contractor shall maintain all records required by the grantor. 2. All reports, plans, surveys, information, documents, maps and other data procedures developed, prepared, assembled, or completed by the Contractor for the purpose of this Agreements shall be made available to the County by the Contractor at any time upon request by the County or HUD. Upon completion of all work contemplated under this agreement copies of all documents and records relating to this agreement shall be surrendered to the County if requested. In any event the sub-recipient shall keep all documents for six (6) years after the expiration of this agreement.

### **17. GRANTEE RECOGNITION**

All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to the funding source. The Contractor will mount a temporary construction sign for projects funded by Housing Urban Development though Collier County Community and Housing Services. The design concept is intended to disseminate key information regarding the development team as well as Equal Housing Opportunity to the general public. The Construction sign shall comply with applicable County codes.

### **18. RIGHT AND PATENT RIGHTS**

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor. The US Department of Housing and Urban Development and the grantee shall possess all rights to invention or discovery, as well as rights in data which may arise as a result of the contractor's services.

### **19. RELIGIOUS ORGANIZATIONS**

CDBG funds may not be used for religious activities or provided to primarily religions organizations. Section 24 CFR 570.200(j) specifies the limitations on CDBG funds.

### **20. RECYCLED PRODUCTS**

The Contractor agrees to provide a preference for those products and services that conserve natural

## **Housing Urban Development (HUD) Supplemental Conditions**

resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

## Housing Urban Development (HUD) Supplemental Conditions

### State and Federal Statutes and Regulations

By signature of this Agreement, the contractor hereby certifies that it will comply with the following (as applicable) federal and state requirements:

<ol style="list-style-type: none"> <li>1. Community Development Block Grant Disaster Recovery Emergency Rule 9BER09-2; The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1975 (42 U.S.C., s. 6901 et.seq.);</li> <li>3. Florida Small and Minority Business Act, s. 288.702- 288.714, F.S.;</li> <li>4. Florida Coastal Zone Protection Act, s. 161.52-161.58, F.S.;</li> <li>5. Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, F.S.;</li> <li>6. Title I of the Housing and Community Development Act of 1974, as amended</li> <li>7. Treasury Circular 1075 regarding drawdown of CDBG funds.</li> <li>9. Sections 290.0401-290.049, F.S.;</li> <li>10. Rule Chapter 9B-43, Fla. Admin. Code.; 10. Department of Community Affairs Technical Memorandums;</li> <li>11. HUD Circular Memorandums applicable to the Small Cities CDBG Program;</li> <li>12. Single Audit Act of 1984;</li> <li>13. National Environmental Policy Act of 1969 and other provisions of law which further the purpose of this Act;</li> <li>14. National Historic Preservation Act of 1966 (Public Law 89-665) as amended and Protection of Historic Properties (24 C.F.R. Part 800);</li> <li>15. Preservation of Archaeological and Historical Data Act of 1966;</li> <li>16. Executive Order 11593 - Protection and Enhancement of Cultural Environment;</li> <li>17. Reservoir Salvage Act;</li> <li>18. Safe Drinking Water Act of 1974, as amended;</li> <li>19. Endangered Species Act of 1958, as amended;</li> <li>20. Executive Order 12898 - Environmental Justice</li> <li>21. Executive Order 11988 and 24 C.F.R. Part 55 – Floodplain Management;</li> <li>22. The Federal Water Pollution Control Act of 1972, as amended (33 U.S.C., s. 1251 et.seq.);</li> <li>23. Executive Order 11990 -Protection of Wetlands;</li> <li>24. Coastal Zone Management Act of 1968, as amended;</li> <li>25. Wild and Scenic Rivers Act of 1968, as amended;</li> <li>26. Clean Air Act of 1977;</li> <li>27. HUD Environmental Standards (24 C.F.R. Part 58);</li> <li>28. Farmland Protection Policy Act of 1981;</li> <li>29. Clean Water Act of 1977;</li> <li>30. Davis- Bacon Wage Rate Act;</li> <li>31. Contract Work Hours and Safety Standards Act of</li> </ol>	<ol style="list-style-type: none"> <li>32. 1962, 40 U.S.C. s. 327 et. seq.;</li> <li>33. The Wildlife Coordination Act of 1958, as amended; Noise Abatement and Control: Departmental Policy Implementation, Responsibilities, and Standards, 24 C.F.R. Part 51, Subpart B;</li> <li>34. Flood Disaster Protection Act of 1973, P.L 92-234;</li> <li>35. Protection of Historic and Cultural Properties under HUD Programs, 24 C.F.R. Part 59;</li> <li>36. Coastal Zone Management Act of 1972, P.L 92-583;</li> <li>37. Architectural and Construction Standards;</li> <li>38. Architectural Barriers Act of 1968, 42 U.S.C. 4151;</li> <li>39. Executive Order 11296, relating to evaluation of flood hazards;</li> <li>40. Executive Order 11288. relating to prevention, control and abatement of water pollution;</li> <li>41. Cost-Effective Energy Conservation Standards, 24 C.P.R. Part 39;</li> <li>42. Section 8 Existing Housing Quality Standards, 24 C.F.R. Part 882;</li> <li>43. Coastal Barrier Resource Act of 1982;</li> <li>44. Federal Fair Labor Standards Act, 29 U.S.C., s.201 et. seq.;</li> <li>45. Title VI of the Civil Rights Act of 1964 Non discrimination;</li> <li>46. Title VII of the Civil Rights Act of 1968 Non-discrimination in housing;</li> <li>47. Age Discrimination Act of 1975;</li> <li>48. Executive Order 12892- Fair Housing</li> <li>49. Section 109 of the Housing and Community Development Act of 1974, Non-discrimination;</li> <li>50. Section 504 of the Rehabilitation Act of 1973 and 24 C.F.R. Part 8;</li> <li>51. Executive Order 11063 - Equal Opportunity in Housing;</li> <li>52. Executive Order 11246- Nondiscrimination;</li> <li>53. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment Training of Lower Income Residents and Local Business Contracting;</li> <li>54. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L., 100-17, and 49 C.F.R. Part 24;</li> <li>55. Copeland Anti-Kickback Act of 1934; Hatch Act;</li> <li>56. Title N Lead-Based Paint Poisoning Prevention Act (42 U.S.C., s. 1251 et. seq.);</li> <li>57. OMB Circulars A-87, A-102, A-122, and A-133, as revised;</li> <li>58. Administrative Requirements for Grants, 24 C.F.R. Part 85; 59. Section 02 of the Department of Housing and Urban Development Reform Act of 1989 and 24 C.F.R. Part 12.</li> </ol>
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## Housing Urban Development (HUD) Supplemental Conditions

### Section 3 Requirements

**What is Section 3?**

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

**How does Section 3 promote self- sufficiency?**

Section 3 is a starting point to obtain job training, employment and contracting opportunities. From this integral foundation coupled with other resources comes the opportunity for economic advancement and self- sufficiency.

- Federal, state and local programs
- Advocacy groups
- Community and faith-based organizations

**How does Section 3 promote homeownership?**

Section 3 is a starting point to homeownership. Once a Section 3 resident has obtained employment or contracting opportunities they have begun the first step to self-sufficiency.

Remember, “It doesn’t have to be fields of dreams”. Homeownership is achievable. For more information visit our HUD [website](#).

**Who are Section 3 residents?**

Section 3 residents are:

- Public housing residents or
- Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below HUD’s income limits as provided below.

<b>SECTION 3 INCOME LIMITS</b>		
<b>(FY 2016 Income Limits from <a href="http://www.huduser.org">www.huduser.org</a>)</b>		
All residents of public housing developments and those participating on the Section 8 program qualify as Section 3 residents. Additionally, individuals residing in Collier County who meet the income limits set forth below also qualify for Section 3 status.		
<b>A picture identification and proof of current residency is required.</b>		
<b>Eligibility Guidelines</b>		
<b>Number in Household</b>	<b>Very low-income (50%)</b>	<b>Low income (80%)</b>
1 person	\$23,300	\$36,800
2 person	\$26,300	\$42,050
3 person	\$29,600	\$47,300
4 person	\$32,850	\$52,550
5 person	\$35,500	\$56,800
6 person	\$38,150	\$61,000
7 person	\$40,750	\$65,200
8 person	\$43,400	\$69,400

## Housing Urban Development (HUD) Supplemental Conditions

### Determining Income Levels

- Low income is defined as 80% or below the median income of that area.
- Very low income is defined as 50% or below the median income of that area.

### What is a Section 3 business concern?

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

### What programs are covered?

Section 3 applies to HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures.

Section 3 also applies to certain HUD-funded Housing and Community Development projects that complete housing rehabilitation, housing construction, and other public construction.

### What types of economic opportunities are available under Section 3?

- Job training
- Employment
- Contracts

Any employment resulting from these expenditures, including administration, management, clerical support, and construction, is subject to compliance with Section 3.

*Examples of Opportunities include but not limited to the list identified:*

- |                         |                       |
|-------------------------|-----------------------|
| • Accounting            | • Iron Works          |
| • Architecture          | • Janitorial          |
| • Appliance repair      | • Landscaping         |
| • Bookkeeping           | • Machine Operation   |
| • Bricklaying           | • Manufacturing       |
| • Carpentry             | • Marketing           |
| • Carpet Installation   | • Painting            |
| • Catering              | • Payroll Photography |
| • Cement/Masonry        | • Plastering          |
| • Computer/Information  | • Plumbing            |
| • Demolition            | • Printing Purchasing |
| • Drywall               | • Research            |
| • Elevator Construction | • Surveying           |
| • Engineering           | • Tile setting        |
| • Fencing               | • Transportation      |
| • Florists              | • Word processing     |
| • Heating               |                       |

## **Housing Urban Development (HUD) Supplemental Conditions**

### **Who will award the economic opportunities?**

Recipients of HUD financial assistance will award the economic opportunities. They and their contractors and subcontractors are required to provide, to the greatest extent feasible, economic opportunities consistent with existing Federal, State, and local laws and regulations.

### **Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is spent
- Participants in HUD Youthbuild programs
- Homeless persons

### **For contracting:**

Businesses that meet the definition of a Section 3 business concern

### **How can businesses find Section 3 residents to work for them?**

Businesses can recruit Section 3 residents in public housing developments and in the neighborhoods where the HUD assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

### **Are recipients, contractors, and subcontractors required to provide long-term employment opportunities, not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file a complaint if it seems a recipient is violating Section 3 requirements are being on a HUD-funded project.

### **Will HUD require compliance?**

Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

## Housing Urban Development (HUD) Supplemental Conditions

### How can Section 3 residents or Section 3 business concerns allege Section 3 violations?

You can file a written complaint with either the regional or local offices below.

#### ATLANTA REGIONAL OFFICE

U.S. Department of Housing and Urban Development Southeast Office

40 Marietta Street

Atlanta, GA 30303

(404) 331-5140

(800) 440-8091

Fax: (404) 331-1021

Email: [complaints\\_office\\_04@hud.gov](mailto:complaints_office_04@hud.gov)

#### LOCAL HUD FIELD OFFICE at.

Public Housing and Community Development:

701 NW 1<sup>st</sup> Court, 16<sup>th</sup> Floor; Miami, FL 33136

[Section3@miamidade.gov](mailto:Section3@miamidade.gov)

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts

Additional information may be found at HUD's Section 3 website

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3)

## **Housing Urban Development (HUD) Supplemental Conditions**

**DAVIS BACON ACT IS APPLICABLE  YES  NO**

**DAVIS BACON GENERAL WAGE DECISION FL – NOT APPLICABLE**

**ADDITIONAL CLASSIFICATION DOCUMENTATION REQUIREMENTS**

**HUD FORM 4230A AND INSTRUCTIONS- NOT APPLICABLE**



## **Housing Urban Development (HUD) Supplemental Conditions**

### **ADDITIONAL CLASSIFICATION REQUEST DOCUMENTATION REQUIREMENTS**

To add job classifications not listed on a wage decision, please submit the following to the HUD Office of Labor Relations:

1. Signed statement from the employing contractor identifying the proposed classification(s) & wage rate(s). The contractor must confirm whether or not the affected employee(s) (or their legal representative) concur in the proposed wage rate for each classification requested. If the employees have not yet been selected, the contractor shall indicate the employees are not yet known (see sample letter, attached);
2. written concurrence by the prime/general contractor (as applicable);
3. copy of the applicable wage decision;
4. completed Form **HUD-4230A Report of Additional Classification and Rate**, including the following project information:
  - a. project name & number
  - b. project location
  - c. bid opening date
  - d. contract award date
  - e. description of work
  - f. wage decision number in use
  - g. proposed classification(s) & wage rate(s) for each classification requested
  - h. labor organization information (if applicable)
  - i. prime/general contractor information;

#### **PLEASE NOTE:**

- The wage rate(s) proposed for inclusion in a wage determination must bear a reasonable relationship to the wage rates that already are contained in that wage determination. The proposed wage rates must not be lower than the lowest trade/equipment operator (depending on type of classification requested) rate shown on the wage decision applicable to the project.
- The Department of Labor has suspended processing requests for the approval of additional classifications and wage rates for helpers pursuant to legislation enacted in 1993. Nevertheless, if a contractor wishes to submit a request for such rates, HUD will forward the request to the DOL provided the requesting agency sets aside funds for potential restitution should the request be denied.
- Classifications requested must be specific. Do not use generic titles such as operator, mechanic or installer. Identify the specific trade

## Housing Urban Development (HUD) Supplemental Conditions

### SAMPLE SUB-CONTRACTOR'S LETTER TO REQUEST ADDITIONAL CLASSIFICATIONS

This letter is addressed from a sub-contractor to the general (prime) contractor. If a general contractor is making the request, it would be addressed to the local contracting agency

**ABC Plumbing Co.  
48 East Palm Street  
Miami, FL 33130.**

**June 10, 1999**

Mr. William Smith  
President  
General Contractors, Inc.  
111 SW 5<sup>th</sup> Avenue  
Homestead Shores, FL 33030

Prime contractor would concur/non-concur, and forward this request to the contracting agency.

Dear Mr. Smith:

**Subject: Additional Classification Request**  
**Project Name: Everglades Apartments**  
**Project Number: 555-1212**  
**Wage Decision FL990028**

This will request the addition of the following classifications and wage rates to the wage decision applicable to the subject project:

Classification	Wage Rate
<b>Sprinkler Fitter</b>	<b>\$20.00</b>

**Employees performing the work in the requested classification concur in the proposed wage rate.**

Sincerely,

**Willit Leak  
President  
ABC Plumbing, Inc.**

## Housing Urban Development (HUD) Supplemental Conditions

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REPORT OF ADDITIONAL CLASSIFICATION AND RATE		HUD FORM 4230A <small>Build Approval Office (BAC) Form Rev. 01/21/2015</small>
1. FROM (name and address of requesting agency)  U.S. Department of Housing and Urban Development Region IV Office of Labor Relations, 10 <sup>th</sup> Floor 40 Marietta Street Atlanta, GA 30303  <b>ATTN: Steven Bales</b>		2. PROJECT NAME AND NUMBER   3. LOCATION OF PROJECT (City, County and State)
4. BRIEF DESCRIPTION OF PROJECT		5. CHARACTER OF CONSTRUCTION <input type="checkbox"/> Building <input type="checkbox"/> Residential <input type="checkbox"/> Heavy <input type="checkbox"/> Other (specify) <input type="checkbox"/> Highway
6. WAGE DECISION NO. (include modification number, if any)  <input checked="" type="checkbox"/> COPY ATTACHED		7. WAGE DECISION EFFECTIVE DATE
8. WORK CLASSIFICATION(S)	HOURLY WAGE RATES	
	BASIC WAGE	FRINGE BENEFIT(S) (if any)
9.	10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)	
<b>Check All That Apply:</b>		
<input type="checkbox"/> The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.		
<input type="checkbox"/> The proposed classification is utilized in the area by the construction industry.		
<input type="checkbox"/> The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.		
<input type="checkbox"/> The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).		
<input type="checkbox"/> Supporting documentation attached, including applicable wage decision.		
<b>Check One:</b>		
<input type="checkbox"/> Approved, meets all criteria. DOL confirmation requested.		
<input type="checkbox"/> One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.		
Steven A. Bales, Labor Relations Specialist		FOR HUD USE ONLY LR2000:
Agency Representative <small>(Typed name and signature)</small>	DATE	Log in:
	678-732-2039 <small>PHONE NUMBER</small>	Log out:

## Housing Urban Development (HUD) Supplemental Conditions

<b>Report of Additional Classification and Wage Rate</b>	U. S. Department of Housing and Urban Development Office of Labor Relations	OMB Approval No. 2501-0011 (Exp. 01/31/2010)
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Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

### Instructions

#### General:

**Contractors/Employers:** Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits, that are proposed.

**Local Agency Staff:** Complete items 2 through 10. Submit one copy of this form to the responsible HUD Labor Relations Office with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer's request must be made in writing and must be signed.)

1. For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.
2. Enter the name and number of the project or contract involved.
3. Enter the location of the project involved: city, county and state.
4. Describe the construction involved, e.g., new construction or rehabilitation; number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3-4-story buildings; 120 units.
5. Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.
6. Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.
7. Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)
8. Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.
9. Self-explanatory.
10. If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

Remainder of Form: HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer's request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in "checklist" form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, and a cover letter explaining how the employer's request failed to meet one or more of the criteria.

#### Submission of Report

Completed forms shall be sent to: Branch of Construction Wage Determinations, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

## **Housing Urban Development (HUD) Supplemental Conditions**

### **CERTIFICATIONS AND FORMS**

#### **THE FOLLOWING DOCUMENTS NEED TO BE RETURNED WITH SOLICITATION DOCUMENTS BY DEADLINE TO BE CONSIDERED RESPONSIVE**

1. Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions
2. Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion Lower Tier Covered Transactions
3. Affidavit for and Certification for Claiming Status as a Section 3 Business
4. General Grant Clauses
5. Acknowledgement of Religious Organization Requirements 24 CFR 570.200(j)
6. Conflict of Interest Affidavit
7. Certification for a Drug Free Workplace
8. Disclosure of Lobbying Activities
9. Anticipated Disadvantaged (Minority/Women) Business Participation Statement
10. Affidavit and Certification for Claiming Status as a Section 3 Business for Formal Solicitations

## Housing Urban Development (HUD) Supplemental Conditions

### Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

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

Name	Project Name
Title	Project Number
Firm	Tax ID Number
Street Address	DUNS Number
City, State, Zip	

24 CFR 24.510 & 24 CFR, Part 24, Appendix A

## Housing Urban Development (HUD) Supplemental Conditions

### Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion Lower Tier Covered Transactions

- (1) The prospective lower tier participant certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to the above statement, the prospective participant shall attach an explanation to this form.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Local Government

\_\_\_\_\_  
Title

\_\_\_\_\_  
CDBG Contract Number

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Tax ID Number

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
DUNS Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date

## Housing Urban Development (HUD) Supplemental Conditions

### Affidavit for and Certification for Claiming Status as a Section 3 Business

A Section 3 “Right to Match” preference shall be afforded to enhance the opportunities and ensure that employment and other economic opportunities generated by certain HUD Housing and/or Community Development Assistance funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local law and regulations, be directed to low- and very-low income persons and to business concerns which provide economic opportunities to low- and very-low income persons of local businesses to receive awards of Collier County contracts.

A “Section 3 Business” is defined as a business that provides evidence of their Section 3 certification at the time the bid is offered to the County; evidence shall not be provided after the bid closing time.

When a qualified and responsive, non-Section 3 business submits the lowest price bid, and the bid submitted by one or more qualified and responsive Section 3 Business is within ten percent (10%) of the price submitted by the non-Section 3 business, then the Section 3 Business with the apparent lowest bid offer (i.e. the lowest Section 3 bidder) shall have the opportunity to submit, an offer to match the price(s) offered by the overall lowest, qualified and responsive bidder. In such instances, staff shall first verify if the lowest non-Section 3 bidder and the lowest Section 3 bidder are in fact qualified and responsive bidders. Next, the Purchasing Department shall determine if the lowest bidder meets the requirements of Section 287.087 F.S.

If the lowest Section 3 bidder meets the requirements of 287.087, F.S., the Purchasing Department shall invite the lowest Section 3 bidder to submit a matching offer to the Purchasing Department which shall be submitted within five (5) business days thereafter. If the lowest Section 3 bidder submits an offer that fully matches the lowest bid from the lowest non-Section 3 bidder tendered previously, then award shall be made to the Section 3 bidder. If the lowest Section 3 bidder declines or is unable to match the lowest non-Section 3 bid price(s), then award will be made to the lowest overall qualified and responsive bidder. If the lowest Section 3 bidder does not meet the requirement of Section 287.087 F.S. and the lowest non-Section 3 bidder does, award will be made to the bidder that meets the requirements of the reference state law.

Bidder must complete and submit with their bid response the *Affidavit and Certification for Claiming Status as a Section 3 Business* which is included as part of this solicitation and their current Section 3 certification.

**Failure on the part of a Bidder to submit this Affidavit with their bid response will preclude said Bidder from being considered for Section 3 preference on this solicitation.**

A Bidder who misrepresents the Section 3 Preference status of its firm in a bid submitted to the County will lose the privilege to claim Section 3 Preference status for a period of up to one (1) year.

If necessary, the contracting agency may conduct discussions with qualified and responsive bidders determined to be in contention for being selected for award for the purpose of clarification to assure full understanding of, and verify qualifications and responsiveness to solicitation requirements.

This project is subject to the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD Housing and/or Community Development Assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local law and regulations, be



### Housing Urban Development (HUD) Supplemental Conditions

directed to low- and very-low income persons and to business concerns which provide economic opportunities to low- and very-low income persons.

A Section 3 business concerned is defined as follows:

1. That is 51 percent or more owned by Section 3 residents; or
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
3. That provides evidence of a commitment to subcontract 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 section one or two above.

In conformance with Section 3 federal regulations (24 CFR Part 135), Collier County shall direct efforts to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the order of priority listed below:

1. Category 1 businesses: Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located;
2. Category 2 businesses: Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD HOUSING AND/OR COMMUNITY DEVELOPMENT ASSISTANCE Youthbuild programs;
3. Category 3 businesses: Other Section 3 business concerns.

A business concern seeking to qualify for a Section 3 contracting preference shall certify that the business concern is a Section 3 business concern as described above.

Vendor Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

STATE OF FLORIDA  
 COLLIER COUNTY     DEE COUNTY

Sworn to and Subscribed Before Me, a Notary Public, for the above State and County, on this

Day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires:

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

(AFFIX SEAL)

## Housing Urban Development (HUD) Supplemental Conditions

### Acknowledgement of Terms, Conditions, and Grant Clauses

#### Flow Down of Terms and Conditions from the Grant Agreement

**Subcontracts:** If the vendor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Department for review and approval. The vendor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The recipient shall document in the quarterly report the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

#### Certification

On behalf of my firm, I acknowledge, and agree to perform all of the specifications and grant requirements identified in this solicitation document(s).

Vendor/Contractor Name \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Address \_\_\_\_\_

Solicitation/Contract # \_\_\_\_\_

## Housing Urban Development (HUD) Supplemental Conditions

### Acknowledgement of Religious Organization Requirements 24 CFR 570.200(j)

In accordance with the First Amendment of the United States Constitution "church/state principles," Community Development Block Grant CDBG/NSP assistance may not, as a general rule, be provided to primarily religious entities for any secular or religious activities.

Therefore, the following restrictions and limitations apply to any provider which represents that it is, or may be deemed to be, a religious or denominational institution or an organization operated for religious purposes which is supervised or controlled by or operates in connection with a religious or denominational institution or organization.

A religious entity that applies for and is awarded CDBG/NSP funds for public service activities must agree to the following:

1. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference to persons on the basis of religion.
2. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion.
3. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services.
4. The portion of a facility used to provide public services assisted in whole or in part under this agreement shall contain no sectarian or religious symbols or decorations; and
5. The funds received under this agreement shall be use to construct, rehabilitate or restore any facility, which is owned by the provider and in which the public services are to be provided. However, minor repairs may be made if such repairs are directly related to the public services located in a structure used exclusively for non-religious purposes and constitute in dollar terms, only a minor portion of the CDBG/NSP expenditure for the public services.

I hereby acknowledge that I have read the specific requirements contained in this attachment and that eligibility of my organization's project depends upon compliance with the requirements contained in this agreement.

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(Company)

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(Signature)

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(Date)

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(Print Name)

## Housing Urban Development (HUD) Supplemental Conditions

### Conflict of Interest Affidavit

By the signature below, the firm (employees, officers and/or agents) certifies, and hereby discloses, that, to the best of their knowledge and belief, all relevant facts concerning past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise) which relates to the proposed work; and bear on whether the firm (employees, officers and/or agents) has a possible conflict have been fully disclosed.

Additionally, the firm (employees, officers and/or agents) agrees to immediately notify in writing the Purchasing/General Services Director, or designee, if any actual or potential conflict of interest arises during the contract and/or project duration.

Vendor Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me to be the \_\_\_\_\_ for the Firm, OR who produced the following identification \_\_\_\_\_.

My Commission Expires \_\_\_\_\_

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

(AFFIX SEAL)

## Housing Urban Development (HUD) Supplemental Conditions

### Certification Regarding Drug-Free Workplace Requirements

The offerer certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation and employee assistance programs, and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
  - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

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Typed Name and Title of Certification Official

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Signature Date

## Housing Urban Development (HUD) Supplemental Conditions

### Certification Regarding Lobbying

The undersigned \_\_\_\_\_ (Vendor/ Contractor) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Vendor/Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Signature of Vendor/Contractor's Authorized Official  
Name and Title of Vendor/Contractor's Authorized Official  
Date

## Housing Urban Development (HUD) Supplemental Conditions

### COLLIER COUNTY ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT

Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.

#### A. PRIME VENDOR/CONTRACTOR INFORMATION

PRIME NAME	PRIME FEID NUMBER	CONTRACT DOLLAR AMOUNT
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE (DBE/MBE/WBE)? OR HAVE A SMALL DISADVANTAGED BUSINESS 8A CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? OR A SERVICE DISABLED VETERAN?		
VETERAN?	Y    N	IS THE ACTIVITY OF THIS CONTRACT, CONSTRUCTION ? N  CONSULTATION? N  OTHER? N
DBE?	Y    N	
MBE?	Y    N	
WBE?	Y    N	
SDB 8A?	Y    N	

IS THIS SUBMISSION A REVISION?    Y    N                      IF YES, REVISION NUMBER \_\_\_\_\_

#### B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION

DBE, MBE, WBE VET, SMB8A	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS

TOTALS: \_\_\_\_\_

## Housing Urban Development (HUD) Supplemental Conditions

### C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR

NAME OF SUBMITTER	DATE	TITLE OF SUBMITTER
EMAIL ADDRESS OF PRIME (SUBMITTER)	TELEPHONE NUMBER	FAX NUMBER

**NOTE:** This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.

ETHNICITY	CODE
Black American	BA
Hispanic American	HA
Native American	NA
Subcont. Asian American	SAA
Asian-Pacific American	APA
Non-Minority Women	NMW
Other: not of any other group listed	O

### D. SECTION TO BE COMPLETED BY COLLIER COUNTY

DEPARTMENT NAME	COLLIER CONTRACT # (IFB/RFP or PO/REQ)	GRANT PROGRAM/CONTRACT

ACCEPTED BY:	DATE



## Housing Urban Development (HUD)

### Supplemental Conditions

#### Section 3: Right to Match

#### Invitation to Bid: Formal Price Based Competition

The Collier County Purchasing Department shall apply a Section 3 “Right to Match” policy to enhance the opportunities and ensure that employment and other economic opportunities generated by certain HUD Housing and/or Community Development Assistance funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local law and regulations, be directed to low- and very-low income persons and to business concerns which provide economic opportunities to low- and very-low income persons of local businesses to receive awards of Collier County contracts.

A “Section 3 Business” is defined as a business that provides evidence of their Section 3 certification at the time the bid is offered to the County; evidence shall not be provided after the bid closing time.

When a qualified and responsive, non-Section 3 business submits the lowest price bid, and the bid submitted by one or more qualified and responsive Section 3 Business is within ten percent (10%) of the price submitted by the non-Section 3 business, then the Section 3 Business with the apparent lowest bid offer (i.e. the lowest Section 3 bidder) shall have the opportunity to submit, an offer to match the price(s) offered by the overall lowest, qualified and responsive bidder. In such instances, staff shall first verify if the lowest non-Section 3 bidder and the lowest Section 3 bidder are in fact qualified and responsive bidders. Next, the Purchasing Department shall determine if the lowest bidder meets the requirements of Section 287.087 F.S.

If the lowest Section 3 bidder meets the requirements of 287.087, F.S., the Purchasing Department shall invite the lowest Section 3 bidder to submit a matching offer to the Purchasing Department which shall be submitted within five (5) business days thereafter. If the lowest Section 3 bidder submits an offer that fully matches the lowest bid from the lowest non-Section 3 bidder tendered previously, then award shall be made to the Section3 bidder. If the lowest Section 3 bidder declines or is unable to match the lowest non-Section 3 bid price(s), then award will be made to the lowest overall qualified and responsive bidder. If the lowest Section 3 bidder does not meet the requirement of Section 287.087 F.S. and the lowest non-Section 3 bidder does, award will be made to the bidder that meets the requirements of the reference state law.

Bidder must complete and submit with their bid response the *Affidavit and Certification for Claiming Status as a Section 3 Business* which is included as part of this solicitation and their current Section 3 certification.

**Failure on the part of a Bidder to submit this Affidavit with their bid response will preclude said Bidder from being considered for Section 3 preference on this solicitation.**

A Bidder who misrepresents the Section 3 Preference status of its firm in a bid submitted to the County will lose the privilege to claim Section 3 Preference status for a period of up to one (1) year.

The County may, as it deems necessary, conduct discussions with qualified and responsive bidders determined to be in contention for being selected for award for the purpose of clarification to assure full understanding of, and verify qualifications and responsiveness to solicitation requirements.

## Housing Urban Development (HUD) Supplemental Conditions

### Affidavit and Certification for Claiming Status as a Section 3 Business for Formal Solicitations Solicitation # 17-7067

This project is subject to the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD Housing and/or Community Development Assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local law and regulations, be directed to low- and very-low income persons and to business concerns which provide economic opportunities to low- and very-low income persons.

A Section 3 business concerned is defined as follows:

1. That is 51 percent or more owned by Section 3 residents; or
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
3. That provides evidence of a commitment to subcontract 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 section one or two above.

In conformance with Section 3 federal regulations (24 CFR Part 135), Collier County shall direct efforts to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the order of priority listed below:

1. Category 1 businesses: Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located;
2. Category 2 businesses: Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD HOUSING AND/OR COMMUNITY DEVELOPMENT ASSISTANCE Youthbuild programs;
3. Category 3 businesses: Other Section 3 business concerns.

A business concern seeking to qualify for a Section 3 contracting preference shall certify that the business concern is a Section 3 business concern as described above.

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

STATE OF FLORIDA

COLLIER COUNTY

LEE COUNTY

Sworn to and Subscribed Before Me, a Notary Public, for the above State and County, on this

\_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

My Commission Expires:

Notary Public  
(AFFIX OFFICIAL SEAL)