

**SUBMITTAL TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

323
A



FROM: Housing Authority

SUBMITTAL DATE:
October 3, 2012

SUBJECT: Award of Service Contract for Landscape Maintenance at East Riverside County Public Housing Development Sites

RECOMMENDED MOTION: The Board of Commissioners:

1. Accept and award the service contract to the lowest responsive and responsible bidder, Cal Dreamscape, in the amount of \$74,508 for landscape maintenance services at the eight Public Housing Development Sites in East Riverside County;
2. Authorize the Chairman of the Board of Commissioners to sign the service contract documents on behalf of the Housing Authority of the County of Riverside (HACR); and

(Continued)

Robert Field

Robert Field
Executive Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 74,508	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

SOURCE OF FUNDS: Department of Housing and Urban Development (HUD),
Public Housing Operating Funds

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

Jennifer L. Sargent

BY: Jennifer L. Sargent

County Executive Office Signature

Prev. Agn. Ref.:

District: 4/4; 5/5

Agenda Number

10.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: *Samuel Wong* 10/1/12
 DATE: 9/20/12
 Departmental Co-ordinator
 MARSHAL VICTOR
 FORM APPROVED COUNTY COUNSEL
 BY: *48 Victor*

Dep't Recomm.: Consent
 Per Exec. Ofc.: Consent
 Policy
 Policy

RECOMMENDED MOTION: (Continued)

3. Authorize the Executive Director, or designee, to take the necessary steps to implement the Contract including execution of subsequent necessary and related documents.

BACKGROUND:

The Housing Authority of the County of Riverside (HACR) solicited and advertised an Invitation for Bids (IFB # 2012-004) for landscape maintenance services at eight public housing development sites located throughout eastern Riverside County with a closing date of August 20, 2012. The HACR received and opened four bids. Cal Dreamscape was the lowest bidder that responded to the solicitation. County Counsel and staff reviewed the submitted bid and determined that Cal Dreamscape, as the lowest responsive and responsible bidder. The total amount of compensation paid for the first one year period is \$74,508. The HACR will initially award the contract for the period of one year with the option, at the HACR's discretion, of four additional one-year option periods, for a maximum total of five years.

The funding source is from the Department of Housing and Urban Development (HUD), Public Housing Operating Funds and does not involve the use of county general funds.

HACR staff recommends that the Board of Commissioners approve and award the landscape maintenance service contract between the HACR and Cal Dreamscape. County Counsel has reviewed and approved the contract as to form.

Attachments:

East Riverside County Landscape Maintenance Service Contract

1 **EAST RIVERSIDE COUNTY LANDSCAPE MAINTENANCE SERVICE**
2 **CONTRACT**
3 **BY AND BETWEEN**
4 **THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE**
5 **AND CAL DREAMSCAPE**
6

7 This Contract made by and between **Cal Dreamscape** herein referred to as
8 "CONTRACTOR," and the Housing Authority of the County of Riverside, a public body politic
9 in the State of California (herein referred to as "AUTHORITY").

10 **RECITALS**

11 **WHEREAS**, AUTHORITY is a Housing Authority duly created, established
12 and authorized to transact business and exercise its powers, all under and pursuant to the
13 provision of the Housing Authorities Law which is Part 2 of Division 24 of the California
14 Health and Safety Code commencing with Section 34200 et seq.;

15 **WHEREAS**, pursuant to the Health and Safety Code, AUTHORITY is
16 authorized to make and execute contracts and other instruments necessary or convenient to
17 exercise its powers;

18 **WHEREAS**, CONTRACTOR has the expertise, special skills, knowledge and
19 experience to perform the duties set out herein and agrees to provide such services to
20 AUTHORITY;

21 **NOW THEREFORE**, in consideration of the mutual covenants contained
22 herein, the parties hereto agree as follows:

23 1. **DESCRIPTION OF SERVICES**: CONTRACTOR shall provide monthly
24 landscape maintenance services at East County Public Housing Development sites and furnish
25 all labor, material and equipment as outlined and specified in Exhibit A, attached hereto and by
26 this reference incorporated herein.

27 1.1. CONTRACTOR represents and maintains that it is skilled in the
28 professional calling necessary to perform all services, duties and obligations required by this

1 Contract to fully and adequately complete the project. CONTRACTOR shall perform the
2 services and duties in conformance to and consistent with the standards generally recognized as
3 being employed by professionals in the same discipline in the State of California.
4 CONTRACTOR further represents and warrants to the AUTHORITY that it has all licenses,
5 permits, qualifications and approvals of whatever nature are legally required to practice its
6 profession. CONTRACTOR further represents that it shall keep all such licenses and approvals
7 in effect during the term of this Contract.

8 2. PERIOD OF PERFORMANCE: The term of this Contract shall commence from
9 the date of execution of this Contract and continue in effect through **June 30, 2013** unless
10 terminated as specified in Paragraph 11.

11 2.1 Extension: Upon mutual agreement, the AUTHORITY and CONTRACTOR
12 may extend this Contract for **four (4) consecutive years**, in one-year increments. Such
13 extension must be approved by amendment to this Contract executed by the parties hereto. The
14 cumulative period of performance shall not exceed five (5) years with a completion date of June
15 30, 2017. All applicable indemnification provisions in this Contract shall remain in effect
16 following the termination of this Contract.

17 3. COMPENSATION/PAYMENT:

18 3.1. The AUTHORITY will compensate CONTRACTOR for all services
19 rendered and costs incurred in accordance with the terms in Exhibit B attached hereto and
20 incorporated herein. All employee wages paid, associated with this Contract, are subject to U.S.
21 Department of Labor Service Contract Act Wage Determination No.: 2005-2053, Revision No.
22 15, 06/13/2012.

23 3.2 The Total amount of compensation paid to the CONTRACTOR under this
24 Contract shall not exceed the sum of **Six Thousand Two Hundred Nine and 00/100 Dollars**
25 **per month (\$6,209) for a not to exceed amount of Seventy Four Thousand Five Hundred**
26 **Eight and 00/100 (\$74,508)** for the first (1) year period, including all expenses, unless a written
27 amendment to this Contract is executed by both parties prior to performance of additional
28 services, subject to approval by the Board of Commissioners.

1 CONTRACTOR shall invoice the AUTHORITY on a monthly basis for services
2 rendered during the previous month in accordance with Exhibit B attached hereto.
3 AUTHORITY shall pay the invoice within thirty (30) working days from the date of receipt of
4 the invoice. In the State of California, government agencies are not allowed to pay excess
5 interest and late charges, per Government Code, Section 926.10. Authority shall not be liable
6 for any interest or late charges in the performance of this Agreement.

7 4. ADDITIONAL SERVICES: The CONTRACTOR shall not perform any
8 additional services or incur additional expense without first receiving the express written
9 consent to proceed from the AUTHORITY in the form of an amendment to this contract.

10 5. AMENDMENTS TO WORK PROGRAM: Deputy Executive Director is
11 authorized to approve and execute changes to the CONTRACT. Such changes shall be
12 mutually agreed upon by and between the Deputy Executive Director and CONTRACTOR and
13 shall be incorporated in written amendments to this CONTRACT.

14 6. INDEPENDENT CONSULTANT: AUTHORITY retains CONTRACTOR on an
15 independent contractor basis. CONTRACTOR is not, and shall not be considered to be in any
16 manner, an employee, agent or representative of the AUTHORITY. Personnel performing the
17 Services under this Contract on behalf of CONTRACTOR shall at all times be under
18 CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages,
19 salaries and other amounts due such personnel in connection with their performance of Service
20 and as required by law. CONTRACTOR shall be responsible for all reports and obligations
21 respecting such personnel, including but not limited to, social security taxes, income tax
22 withholdings, unemployment insurance, and workers' compensation insurance.

23 7. SERVICE-CONTRACT ACT: For all service contracts in excess of \$2,500,
24 whose principal purpose of which is to furnish services through the use of "service employees",
25 both parties hereby agree to comply with the Service Contract Act, as amended (41 U.S.C. 351,
26 et seq.), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29
27 U.S.C. 201, et seq.), and related Secretary of Labor regulations and instructions (29 CFR Parts
28 4, 6, 8, and 1925).

1 8. INDEMNIFICATION: CONTRACTOR shall indemnify and hold harmless the
2 AUTHORITY, County of Riverside, its Agencies, Districts, Special Districts and Departments,
3 their respective directors, officers, Board of Supervisors, elected and appointed officials,
4 employees, agents and representatives (individually and collectively hereinafter referred to as
5 Indemnitees) from any liability whatsoever, based or asserted upon any services of
6 CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of
7 or in any way relating to this Contract, including but not limited to property damage, bodily
8 injury, or death, and from any and all claims that may be made against AUTHORITY based
9 upon any contention by any third party that an employer-employee relationship exists by reason
10 of this Contract, or any other element of any kind or nature whatsoever arising from the
11 performance of CONTRACTOR, its officers, employees, subcontractors, agents or
12 representatives Indemnitors from this Contract. CONTRACTOR shall defend at its sole
13 expense, all costs and fees including, but not limited to, attorney fees, cost of investigation,
14 defense and settlements or awards, the Indemnitees in any claim or action based upon such
15 alleged acts or omissions.

16 With respect to any action or claim subject to indemnification herein by CONTRACTOR,
17 CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and
18 shall have the right to adjust, settle, or compromise any such action or claim without the prior
19 consent of AUTHORITY; provided, however, that any such adjustment, settlement or
20 compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification
21 to Indemnitees as set forth herein.

22 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has
23 provided AUTHORITY the appropriate form of dismissal relieving AUTHORITY from any
24 liability for the action or claim involved.

25 The specified insurance limits required in this Contract shall in no way limit or
26 circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees
27 herein from third party claims.

28 In the event there is conflict between this clause and California Civil Code Section 2782,

1 this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not
2 relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by
3 law.

4 9. INSURANCE: Without limiting or diminishing the CONTRACTOR's obligation
5 to indemnify or hold the AUTHORITY harmless, CONTRACTOR shall procure and maintain
6 or cause to be maintained, at its sole cost and expense, the following insurance coverages during
7 the term of this Contract. As respects to the insurance section only, the AUTHORITY herein
8 refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments,
9 their respective directors, officers, Board of Supervisors, employees, elected or appointed
10 officials, agents or representatives as Additional Insureds.

11 9.1 Workers' Compensation: If the CONTRACTOR has employees as defined
12 by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation
13 Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include
14 Employers' Liability (Coverage B) including Occupational Disease with limits not less than
15 \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor
16 of the AUTHORITY; and, if applicable, to provide a Borrowed Servant/Alternate Employee
17 Endorsement.

18 9.2 Commercial General Liability: Commercial General Liability insurance
19 coverage, including but not limited to, premises liability, unmodified contractual liability,
20 products and completed operations liability, personal and advertising injury, employment
21 practices liability, and cross liability coverage, covering claims which may arise from or out of
22 CONTRACTOR's performance of its obligations hereunder. Policy shall name the
23 AUTHORITY, the County, its Agencies, Districts, Special Districts, Consultants, Departments,
24 their Directors, Officers, Board of Commissioners, employees, elected or appointed officials,
25 agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than
26 \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate
27 limit, it shall apply separately to this Contract or be no less than two (2) times the occurrence
28 limit.

1 9.3 Vehicle Liability: If vehicles or mobile equipment are used in the
2 performance of the obligations under this Contract, then CONTRACTOR shall maintain
3 liability insurance for all owned, non-owned or hired vehicles so used in an amount not less
4 than \$1,000,000 per occurrence combined single limit. If such insurance contains a general
5 aggregate limit, it shall apply separately to this Contract or be no less than two (2) times the
6 occurrence limit. Policy shall name the AUTHORITY, the County, its Agencies, Districts,
7 Special Districts, Consultants, Departments, their Directors, Officers, Board of Commissioners,
8 employees, elected or appointed officials, agents or representatives as Additional Insureds.

9 9.4 Professional Liability: Contractor shall maintain Professional Liability
10 Insurance providing coverage for the Contractor's performance of work included within this
11 Contract, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000
12 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made
13 basis rather than an occurrence basis, such insurance shall continue through the term of this
14 Contract and CONTRACTOR shall purchase at his sole expense either 1) an Extended
15 Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new
16 insurer with a retroactive date back to the date of, or prior to, the inception of this Contract; or
17 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained
18 continuous coverage with the same or original insurer. Coverage provided under items; 1), 2),
19 or 3) will continue as long as the law allows.

20 9.5 General Insurance Provisions - All lines:

- 21 a. Any insurance carrier providing insurance coverage hereunder shall be
22 admitted to the State of California and have an A M BEST rating of not less
23 than A: VIII (A:8) unless such requirements are waived, in writing, by the
24 County Risk Manager. If the County's Risk Manager waives a requirement
25 for a particular insurer such waiver is only valid for that specific insurer and
26 only for one policy term.
- 27 b. The CONTRACTOR must declare its insurance self-insured retention for
28 each coverage required herein. If any such self-insured retention exceed

1 \$500,000 per occurrence each such retention shall have the prior written
2 consent of the County Risk Manager before the commencement of operations
3 under this Contract. Upon notification of self-insured retention unacceptable
4 to the AUTHORITY, and at the election of the County's Risk Manager,
5 CONTRACTOR's carriers shall either; 1) reduce or eliminate such self-
6 insured retention as respects this Contract with the AUTHORITY, or 2)
7 procure a bond which guarantees payment of losses and related
8 investigations, claims administration, and defense costs and expenses.

9 c. CONTRACTOR shall cause CONTRACTOR's insurance carrier(s) to
10 furnish the AUTHORITY with either 1) a properly executed original
11 Certificate(s) of Insurance and certified original copies of Endorsements
12 effecting coverage as required herein, and 2) if requested to do so orally or in
13 writing by the County Risk Manager, provide original Certified copies of
14 policies including all Endorsements and all attachments thereto, showing
15 such insurance is in full force and effect. Further, said Certificate(s) and
16 policies of insurance shall contain the covenant of the insurance carrier(s)
17 that thirty (30) days written notice shall be given to the AUTHORITY prior
18 to any material modification, cancellation, expiration or reduction in
19 coverage of such insurance. In the event of a material modification,
20 cancellation, expiration, or reduction in coverage, this Contract shall
21 terminate forthwith, unless the AUTHORITY receives, prior to such
22 effective date, another properly executed original Certificate of Insurance and
23 original copies of endorsements or certified original policies, including all
24 endorsements and attachments thereto evidencing coverage's set forth herein
25 and the insurance required herein is in full force and effect. ***CONTRACTOR***
26 ***shall not commence operations until the AUTHORITY has been furnished***
27 ***original Certificate (s) of Insurance and certified original copies of***
28 ***endorsements and if requested, certified original policies of insurance***

1 *including all endorsements and any and all other attachments as required*
2 *in this Section, showing that such insurance is in full force and effect. An*
3 *individual authorized by the insurance carrier to do so on its behalf shall*
4 *sign the original endorsements for each policy and the Certificate of*
5 *Insurance.*

- 6 d. It is understood and agreed to by the parties hereto that the
7 CONTRACTOR's insurance shall be construed as primary insurance, and the
8 AUTHORITY's insurance and/or deductibles and/or self-insured retention's
9 or self-insured programs shall not be construed as contributory.
- 10 e. If, during the term of this Contract or any extension thereof, there is a
11 material change in the scope of services; or, there is a material change in the
12 equipment to be used in the performance of the scope of work; or, the term of
13 this Contract, including any extensions thereof, exceeds five (5) years; the
14 AUTHORITY reserves the right to adjust the types of insurance and the
15 monetary limits of liability required under this Contract, if in the County
16 Risk Manager's reasonable judgment, the amount or type of insurance carried
17 by the CONTRACTOR has become inadequate.
- 18 f. CONTRACTOR shall pass down the insurance obligations contained herein
19 to all tiers of subcontractors working under this Contract.
- 20 g. The insurance requirements contained in this Contract may be met with a
21 program(s) of self-insurance acceptable to the AUTHORITY.
- 22 h. CONTRACTOR agrees to notify AUTHORITY of any claim by a third party
23 or any incident or event that may give rise to a claim arising from the
24 performance of this Contract.

25 10. GENERAL:

26 10.1 CONTRACTOR shall not delegate or assign any interest in this Contract,
27 whether by operation of law or otherwise, without the prior written consent of
28 AUTHORITY.

1 10.2 Any waiver by AUTHORITY of any breach of any one or more of the
2 terms of this Agreement shall not be construed to be a waiver of any subsequent
3 or other breach of the same or of any other term of this Contract. Failure on the
4 part of AUTHORITY to require exact, full and complete compliance with any
5 terms of this Agreement shall not be construed as in any manner changing the
6 terms or preventing AUTHORITY from enforcement of the terms of this
7 Contract.

8 10.3 In the event the CONTRACTOR receives payment under this Contract
9 which is later disallowed by AUTHORITY for nonconformance with the terms
10 of the Contract, the CONTRACTOR shall promptly refund the disallowed
11 amount to the AUTHORITY on request; or at its option the AUTHORITY may
12 offset the amount disallowed from any payment due to the CONTRACTOR.

13 10.4 CONTRACTOR shall not provide partial delivery or shipment of
14 services or products unless specifically stated in the Contract.

15 10.5 CONTRACTOR shall not provide any services or products subject to any
16 chattel mortgage or under a conditional sales contract or other agreement by
17 which an interest is retained by a third party. The CONTRACTOR warrants that
18 it has good title to all materials or products used by CONTRACTOR or provided
19 to AUTHORITY pursuant to this Contract, free from all liens, claims or
20 encumbrances.

21 10.6 The AUTHORITY agrees to cooperate with the CONTRACTOR in the
22 CONTRACTOR'S performance under this Contract, including, if stated in the
23 Agreement, providing the CONTRACTOR with reasonable facilities and timely
24 access to AUTHORITY data, information and personnel.

25 10.7 CONTRACTOR shall comply with all applicable Federal, State and local
26 laws and regulations. CONTRACTOR will comply with all applicable
27 AUTHORITY policies and procedures. In the event that there is a conflict
28 between the various laws or regulations that may apply, the CONTRACTOR

1 shall comply with the more restrictive law or regulation.

2 10.8 CONTRACTOR shall comply with all air pollution control, water
3 pollution, safety and health ordinances, statutes or regulations which apply to
4 performance under this Contract.

5 10.9 CONTRACTOR shall comply with all requirements of the Occupational
6 Safety and Health Administration (OSHA) standards and codes as set forth by
7 the U.S. Department of Labor and the State of California (Cal/OSHA).

8 10.10 This Contract shall be governed by the laws of the State of California.
9 Any legal action related to the performance or interpretation of this Contract
10 shall be filed only in the Superior Court of the State of California located in
11 Riverside, California, and the parties waive any provision of law providing for a
12 change of venue to another location. In the event any provision in this Contract
13 is held by a court of competent jurisdiction to be invalid, void, or unenforceable,
14 the remaining provisions will nevertheless continue in full force without being
15 impaired or invalidated in any way.

16 11. TERMINATION: AUTHORITY may, by written notice to CONTRACTOR,
17 terminate this Contract in whole or in part at any time. Such termination may be for
18 AUTHORITY's convenience or because of CONTRACTOR's failure to perform its duties and
19 obligations under this Contract including, but not limited to, the failure of CONTRACTOR to
20 timely perform Services pursuant to the Schedule of this Contract.

21 11.1 Discontinuance of Services. Upon receipt of written Notice of
22 Termination, CONTRACTOR shall discontinue all affected Services immediately, unless
23 otherwise directed by the Notice, and deliver to the AUTHORITY all data, estimates, graphs,
24 summaries, reports, and other related materials as may have been prepared or accumulated by
25 CONTRACTOR in performance of Services, whether completed or in progress.

26 11.2 Effect of Termination for Convenience. If the termination is to be for the
27 convenience of the AUTHORITY, the AUTHORITY shall compensate CONTRACTOR for
28 Services satisfactorily provided through the date of termination. Such payment shall include a

1 pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on
2 unperformed Services. CONTRACTOR shall provide documentation deemed adequate by
3 AUTHORITY's Representative to show the Services actually completed by CONTRACTOR
4 prior to the date of termination. This Contract shall terminate immediately upon
5 CONTRACTOR's receipt of the written Notice of Termination.

6 11.3 Effect of Termination for Cause. If the termination is due to the failure
7 of CONTRACTOR to fulfill its obligations under this Contract, CONTRACTOR shall be
8 compensated for those Services which have been completed and accepted by the AUTHORITY.
9 In such case, the AUTHORITY may take over the work and prosecute the same to completion
10 by contract or otherwise. Further, CONTRACTOR shall be liable to the AUTHORITY for any
11 reasonable additional costs incurred by the AUTHORITY to revise work for which the
12 AUTHORITY has compensated CONTRACTOR under this Contract, but which the
13 AUTHORITY has determined in its sole discretion needs to be revised in part or whole to
14 complete the Project. Following discontinuance of Services, the AUTHORITY may arrange for
15 a meeting with CONTRACTOR to determine what steps, if any, CONTRACTOR can take to
16 adequately fulfill its requirements under this Contract. In its sole discretion, AUTHORITY's
17 Representative may propose an adjustment to the terms and conditions of the Contract,
18 including the contract price. Such contract adjustments, if accepted in writing by the Parties,
19 shall become binding on CONTRACTOR and shall be performed as part of this Contract. In
20 the event of termination for cause, unless otherwise agreed to in writing by the parties, this
21 Contract shall terminate thirty (30) days following the date the Notice of Termination was
22 mailed to the CONTRACTOR. Termination of this Contract for cause may be considered by
23 the AUTHORITY in determining whether to enter into future contracts with CONTRACTOR.

24 11.4 Cumulative Remedies. The rights and remedies of the parties provided in
25 this Section are in addition to any other rights and remedies provided by law or under these
26 Contracts.

27 12. CONFLICT OF INTEREST: CONTRACTOR shall have no interest, and shall
28 not acquire any interest, direct or indirect, which will conflict in any manner or degree with the

1 performance of services required under this Contract.

2 13. ADMINISTRATION: The AUTHORITY Deputy Executive Director (or
3 designee) shall administer this Contract on behalf of AUTHORITY.

4 14. ASSIGNMENT: This Contract shall not be assigned by CONTRACTOR, either
5 in whole or in part, without prior written consent of AUTHORITY. Any assignment or
6 purported assignment of this Contracts by CONTRACTOR without the prior written consent of
7 AUTHORITY will be deemed void and of no force or effect.

8 15. NONDISCRIMINATION: CONTRACTOR represents that it is an equal
9 opportunity employer and it shall not discriminate against any employee or applicant for
10 employment because of race, religion, color, national origin, ancestry, sex, physical condition,
11 or age. Such non-discrimination shall include, but not be limited to, all activities related to
12 initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff
13 or termination.

14 16. ALTERATION: No alteration or variation of the terms of this Contract shall be
15 valid unless made in writing and signed by the parties hereto, and no oral understanding or
16 agreement not incorporated herein shall be binding on any of the parties hereto.

17 17. ELIGIBILITY: Services and benefits shall be provided by CONTRACTOR to
18 individuals without reference to their religion, color, sex, national origin, age or physical or
19 mental handicap.

20 18. LICENSE AND CERTIFICATION: CONTRACTOR verifies upon execution of
21 this Contract, possession of a current and valid license in compliance with any local, State, and
22 Federal laws and regulations relative to the scope of services to be performed under Exhibit A,
23 and that services(s) will be performed by properly trained and licensed staff.

24 19. CONFIDENTIALITY: CONTRACTOR shall observe all Federal, State and
25 AUTHORITY regulations concerning confidentiality of records. CONTRACTOR shall refer
26 all requests for information to AUTHORITY.

27 20. WORK PRODUCT: All reports, preliminary findings, or data assembled or
28 compiled by CONTRACTOR under this Contract become the property of the AUTHORITY.

1 The AUTHORITY reserves the right to authorize others to use or reproduce such materials.
2 Therefore, such materials shall not be circulated in whole or in part, nor released to the public,
3 without the direct authorization of the AUTHORITY Deputy Executive Director or an
4 authorized designee.

5 21. JURISDICTION AND VENUE: This Contract is to be construed under the laws
6 of the State of California. The parties agree to the jurisdiction and venue of the Superior Court
7 for the County of Riverside, State of California.

8 22. MEDIATION: CONTRACTOR and AUTHORITY agree that in the event of
9 any controversy or dispute between AUTHORITY and CONTRACTOR arising out of this
10 Contract, regardless of the nature of the claim or dispute whether in tort, contract, or otherwise,
11 which are not adequately addressed by the AUTHORITY's informal and formal dispute
12 resolution process, if applicable, shall be submitted to mediation. The parties shall jointly select
13 a mediator acceptable to CONTRACTOR and AUTHORITY. The mediation shall take place in
14 the County of Riverside. Each party shall be responsible for its own legal fees and other
15 expenses incident to the preparation for mediation. If the dispute cannot be resolved by
16 mediation, neither AUTHORITY nor CONTRACTOR will waive their rights to bring the
17 appropriate legal action in a court of competent jurisdiction within the County of Riverside.

18 23. WAIVER: Any waiver by AUTHORITY of any breach of any one or more of
19 the terms of this Contract shall not be construed to be a waiver of any subsequent or other
20 breach of the same or of any other term thereof. Failure on the part of the AUTHORITY to
21 require exact, full and complete compliance with any terms of this Contract shall not be
22 construed as in any manner changing the terms hereof, or estopping AUTHORITY from
23 enforcement hereof.

24 24. SEVERABILITY: If any provision in this Contract is held by a court of
25 competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will
26 nevertheless continue in full force without being impaired or invalidated in any way.

27 25. ENTIRE CONTRACT: This Contract constitutes the entire contract between the
28 parties hereto with respect to the subject matter hereof and all prior or contemporaneous

1 agreements of any kind or nature relating to the same shall be deemed to be merged herein.
2 Any modifications to the terms of this Contract must be in writing and signed by the parties
3 herein.

4 26. SURVIVABILITY OF TERMS: Provisions of this Contract that are not fully
5 performed or are not capable of being fully performed as of the date of termination will survive
6 termination of this Contract.

7 27. MISCELLANEOUS: As used in this contract, the term CONTRACTOR also
8 includes Contractor's owners, officers, employees, representatives and agents.

9 28. EXHIBITS: The Contract Documents means and includes, without limitation,
10 all of the following which are incorporated herein by this reference and are made a part of this
11 CONTRACT as if fully set forth herein. The Contract Documents consist of the following
12 component parts:

13 28.1 Exhibit A: Scope of Services

14 28.2 Exhibit B: Compensation/Payment Service Fee Schedule per Public
15 Housing Development Site

16 28.3 Exhibit C: Form HUD-5370 CI (10/2006), General Conditions for Non-
17 Construction Contracts, Section I – (With or without Maintenance Work) & Form
18 HUD-5370 CII (10/2006), General Conditions for Non-Construction Contracts,
19 Section II – (With Maintenance Work)

20 28.4 Exhibit D: U.S. Department of Labor Service Contract Act Wage
21 Determination No.: 2005-2053, Revision No. 15, 06/13/2012.

22 29. NOTICES: All correspondence and notices required or contemplated by this
23 Contract shall be delivered to the respective parties at the addresses set forth below and are
24 deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:
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Heidi Marshall
Housing Authority of the
County of Riverside
5555 Arlington Avenue
Riverside, California 92504-2506

Theresa Garcia
Cal Dreamscape
22421 Barton Road # 286
Grand Terrace, CA 92313

(signatures on next page)

1 **IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized
2 representatives to execute this Contract this ____ day of _____, 2012.

3
4
5 **Cal Dreamscape**

6
7 By:  _____
8 Kenneth Reed

9
10 Title: Owner _____

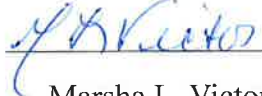
11
12
13 **Housing Authority of the County of Riverside**

14
15 By: _____
16 John F. Tavaglione, Chairman Board of Commissioners

17
18
19 APPROVED AS TO FORM:

20 Pamela J. Walls
21 County Counsel

Attest:
Kecia Harper-Ihem
Clerk of the Board

22 By:  9/20/12
23 Marsha L. Victor, Deputy County Counsel

Deputy

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26 S:\Department\Contracting\aaaDevelopment Division\Landscaping\Landscaping East County\East County Landscaping 2012\Due Diligence - Lowest Apparent Bidder\Landscape Maintenance
27 Service Contract.docx

1 **Exhibit A**

2 **Scope of Services**

3
4 **1. EMERGENCY NUMBERS:** The Contractor shall provide at all times throughout the
5 duration of this contract, emergency telephone numbers which can be called for emergency
6 conditions at any time the Contractor's representatives are not immediately available at the job
7 site. An alternative number shall be provided in case no answer is received at the first number.
8 The emergency number shall be used to contact a responsible representative of the Contractor
9 who can take the necessary action required to alleviate an emergency condition which threatens
10 to cause damage to any property.

11 **2. EXTRA WORK:** Contractor shall furnish the Housing Authority with a *firm quote/bid*
12 for any extra work which the contractor determines may be needed or desired during the
13 contract period. Extra work or additional work includes, but is not limited to, reseeding,
14 planting of major areas and all materials associated with the extra work such as mulch, flowers,
15 plants, seed, fertilizer, etc. Commencement of any extra work shall only occur after receipt by
16 the Contractor of written approval and authorization for such work from the HACR.

17 *Any damage caused to the properties, including the irrigation and sprinkler system, by the*
18 *Contractor during maintenance or extra work shall be repaired at the Contractor's expense.*

19 **3. MOWING:** *All trash, papers, limbs and loose debris are to be removed and discarded*
20 *prior to mowing and trimming.* Lawn/turf areas shall be mowed by the Contractor once each
21 week to a height appropriate for the season (no longer than 2" in height). It shall be the
22 Contractor's responsibility to move portable objects that would obstruct his mowing operation.
23 Lawn areas shall be left neat and clean after mowing. Any lawn/turf areas that cannot be
24 reached with the lawnmower are to be trimmed. All turf areas inaccessible to mowing
25 equipment will be trimmed prior to moving as needed to maintain a neat, well-groomed
26 appearance.

27 **4. MOWING EQUIPMENT:** Lawns shall be mowed with power propelled rotary or reel
28 type mowers. Mowing equipment shall be capable of performing a neat mowing or trimming of

1 grass to project a rich, well-manicured appearance. All mowers will be equipped with grass
2 catching devices and shall be maintained in good working condition.

3 **5. MOWING PROCEDURE:** Mowing shall be done neatly and completely up to the edge
4 of paved areas and around all obstructions such as manholes, sprinkler valves, fire hydrants,
5 poles, posts, trees, shrubbery, perimeter of all buildings, structures, flower beds and fences.
6 Sprinkler heads to be cleared of grass by use of weed eater, ensuring that water spray from
7 sprinkler head is not obstructed by grass. Care shall be taken to prevent damage to turf when
8 grounds are wet. Any damage to lawn areas when grounds are wet caused by Contractor shall be
9 repaired at Contractor's expense. Paved areas shall be hand swept, vacuumed, or blown to
10 remove grass clippings within the same day the mowing is performed.

11 **6. EDGING:** Shall mean cutting all grass and/or weeds to lawn heights, along walls or
12 buildings and paved areas, edges of foundations and slabs, stairways or steps, fences, shrub
13 plantings, trees, posts and poles on a weekly basis. Edges along paved areas shall be trimmed to
14 prevent grass, ice plant or weeds from encroaching upon the paved areas.

15 **7. QUALITY OF WORK:** The Contractor will be responsible for mowing at a consistent
16 height throughout each property site and shall avoid damage to the buildings, grounds or grass.
17 The Contractor should take care to avoid hitting cars with any flying debris including grass
18 clippings. In addition, the Contractor shall avoid throwing grass clippings and debris onto
19 porches, patios, and hanging clothes. The Contractor is responsible for mowing at a height that
20 will neither scalp the grass nor will it result in an unkempt, appearance within a few days of
21 being mowed (due to the type, and mixture of grasses at each site, the mowing height is to be at
22 a slightly lower or shorter level than the customary height). Any damage to electrical or
23 sprinkler pipes and any other property (HA- or tenant-owned) from mowing, or other services
24 performed by the contractor, will be the contractor's sole responsibility to repair in a timely
25 manner (NOTE: Damaged sprinkler systems, including sprinkler heads, will be repaired prior to
26 the contractor leaving the site the day of the service).

27 **8. FERTILIZING/SEEDING:** Fertilizer shall be applied on as-needed basis to assure the
28 proper maintenance of the turf areas. Fertilizer shall be watered in after each application either

1 manually or by the next irrigation cycle to be coordinated with the resident manager of the
2 complex. Remove any fertilizers from sidewalks and parking areas to prevent staining. NOTE:
3 **Scalping of winter rye – lawn scalping and re-seeding shall be performed annually before**
4 **the end of October. Rye grass seed will be provided by the HACR.**

5 9. **AERATION:** Aeration of lawn/turf areas may be done at the direction of the HACR.
6 The aerator must not be allowed to operate on any sidewalks, driveways, or parking lots. All
7 coring must be removed from all walkways, driveways and parking lots.

8 10. **GROUND COVER:** Ground covers shall be inspected weekly. Maintenance shall
9 include removal of all debris, including leaves, branches, paper, and dead woody plant material.
10 Weeds shall be removed regularly but no less than once a month. *The weeds shall not be*
11 *allowed to become established in these areas.* Weeds are to be removed completely, chemically
12 or manually. Ground cover shall be fertilized four (4) times per year with a commercial
13 fertilizer, or as necessary to maintain an appearance of dense, lush plant growth.

14 All ground covers shall be pruned or trimmed neatly away from shrubs, trees, walks and
15 parking curbs weekly.

16 11. **SHRUB/FLOWER BED/FOUNDATION PLANTING CARE:** Removal of spent
17 flowers spikes, removal of all leaves and debris from plant areas shall be done weekly. Weeds
18 are to be removed from beds chemically or manually. All weeds and debris are to be removed
19 from premises. **No debris shall be placed in the dumpsters on the premises at any time.**
20 Pruning shall be performed as a continuous operation. **Plants will not be allowed to develop**
21 **stray, undesirable growth.** Perennials and vines shall be fertilized twice annually. All
22 fertilizers are to be applied evenly with a thorough watering to follow during the next irrigation
23 cycle. Shrubs located in lawns and ground cover areas will not require additional fertilizer
24 except as noted.

25 12. **TREES:** Contractor is to maintain trees of various types, whether specifically
26 mentioned or not.

27 Tree staking and guying: Contractor shall remove stakes and guys as soon as they are no longer
28 needed. Stakes and guys are to be inspected frequently to prevent rubbing that causes bark

1 wounds. All trees shall be re-staked, realigned tied or retied and guyed or re-guyed as necessary
2 to aid and promote proper growth. Cinch ties or VIT braces shall be used to insure no bruising.
3 When topping trees a separate bid must be submitted by the contractor, trees should be trimmed
4 away from sides and roof areas of buildings at least 18". Contractor shall furnish all materials
5 required.

6 Fertilizing: All trees except Eucalyptus species within the project area will be deep root fed
7 once per year.

8 Pruning: will be required for the removal of dead wood, low branches, misshapen or
9 misdirected branches, branches against buildings and broken branches. All cuts shall be made
10 neatly. Pruning for general clean-up of trees is recommended at least twice per year. Pruning is
11 limited to the lower 12 feet of trees or as far as a man can reach with a pole saw.

12 **Remove trash, leaves, branches, and other debris from under trees, shrubs, and grass**
13 **areas throughout the development.**

14 **13. WEED, FUNGUS AND PEST CONTROL WITHIN ALL PLANTED AREAS:**

15 Weed, fungus and pest (including snails) control of ground covers on slopes and flat areas
16 within the project boundary shall be provided to all such planted areas by the application of
17 granular and/or liquid material and/or cultivation as required and necessary to maintain effective
18 control. Widespread pest problems requiring power sprayers will be subcontracted to licensed
19 pest control applicators and will be considered an extra charge. Coordination with HACR and
20 licensed pest control is required. **Note: Care should be taken in the using of herbicides due**
21 **to the presence of children, the elderly and anyone else who might come in contact with**
22 **the chemicals.**

23 **14. IRRIGATION SYSTEM:** Contractor shall notify HACR of lawn and/or shrub areas
24 that appear to be lacking proper irrigation upon initial observation. HACR will conduct
25 irrigation repairs as required. Contractor however, is responsible for any repairs or replacement
26 required as the result of damage sustained during the provision of services.

27 **15. HARDSCAPE AREAS:** Hardscape areas (as designated below) shall be kept clear of
28 debris from the maintenance operation, erosion, erosion run off from storms, irrigation or wind-

1 blown debris weekly by compressed air from a blow pack.

2 Designated areas: Entry drives, sidewalks, carports.

3 Grass and weeds growing in cracks of paved areas shall be removed once each month. Sterilants
4 will be used to inhibit growth, except in areas where such use may endanger planned plant life.

5 Policing of common areas around trash containers to remove all litter shall be done weekly.

6 **16. DEBRIS REMOVAL:** In general, it is intended that the maintenance Contractor see
7 that the premises are kept neat and clean of foreign debris. **Clean-up shall consist of removal**
8 **of all debris, paper and weeds** on a weekly basis from landscape areas. Promptly after
9 pruning and trimming of shrubbery, weeding, edging and trimming of grass and other ground
10 cover, all cuttings and debris shall be removed from the work site. Immediately after working in
11 the areas of walks, patios, and driveways they shall be swept clean with brooms, vacuum or
12 blower. All debris shall be removed from the work site at Contractor's cost. **At no time shall**
13 **any debris be disposed of in on-site dumpsters.**

14 **17. SUBCONTRACTOR:** No Subcontractors will be used in the performance of the
15 contract without the approval of HACR representative.

16 **18. WORK NOT INCLUDED:** Contractor will not furnish new trees, shrubs, ground
17 cover, vines or seasonal flowers under regular maintenance contract.

18 **19. EQUIPMENT PLACEMENT/STORAGE:** Contractor shall, at all times, assure the
19 placement of equipment in such areas as to prevent damage to property's landscape areas and
20 injury to persons. Equipment shall not be left unattended in turf areas. No portion of the
21 property shall be used for storage of any landscape material, unless specific approval is given by
22 the authorized representative of the HACR.

23 **20. EQUIPMENT, SUPPLIES; MATERIALS:** As a part of the proposed fees, the
24 Contractor shall supply any and all such items needed to provide the services detailed herein;
25 meaning, the HACR shall not pay any additional fees for such.

26 **21. CONTRACTOR/STAFF HOURS:** It is intended to have landscape services provide
27 *complete service* a minimum of ONCE per week, whether it takes one or more visits,
28 throughout the duration of the maintenance contract.

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22. LAWS REGULATING APPLICATION OF HERBICIDES, PESTICIDES, and OR TURF AGENTS: Contractor shall comply with all City of (depending on the location of public housing development site), County of Riverside, State of California, and applicable federal laws regarding application of any herbicide, pesticide or other agent to turf, shrubs, trees and plants.

23. SAFETY: The contractor shall, at all times, ensure that all work provided by the contractor complies with all local, State and Federal rules pertaining to work place safety; meaning, the contractor shall, at all times, conduct business in such a manner as to protect its workers, HACR residents, HACR staff, and the public. Further, the contractor shall have full and sole responsibility to correct any such condition found unsafe by any authorized entity (including the HACR), and, if such unsafe conditions result to any group named within this section, shall have full and sole responsibility to compensate such persons if so ordered by an authorized agency or a court having jurisdiction.

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Exhibit B

Compensation/Payment Service Fee Schedule per Public Housing Development Site

Item #	Public Housing Developments - Site Addresses	Monthly Service Fee Amount
1	Corregidor Manor 34-355 Corregidor Dr., Cathedral City, CA 92234	\$ 700.00
2	Quinto del Sol Apartments 13580 – 13604 Don English Dr., Desert Hot Springs, CA 92240	\$ 1267.00
3	Dr. Clair S. Johnson Apartments 91-400 Seventh St., Mecca, CA 92254	\$ 700.00
4	Thermal I Apartments 87015 – 87045 Church St., Thermal, CA 92274 56640 – 56690 Polk St., Thermal, CA 92274	\$ 1267.00
5	Thermal II 56690 – 56720 Polk St., Thermal, CA 92274	\$ 875.00
6	Aladdin Villas 45-909 Aladdin St., Indio, CA 92201	\$ 700.00
7	Racquet Club 2383 E. Racquet Club Rd., Palm Springs, CA 92262	\$ 350.00
8	Calle de Carlos 3721 & 3989 E. Calle de Carlos, Palm Springs, CA 92262	\$ 350.00
	TOTAL (MONTHLY) SERVICE FEE AMOUNT	\$6209.00
	TOTAL (ANNUAL) SERVICE FEE AMOUNT	\$ 74508.00

General Conditions for I Contracts

Section I – (With or without Maintenance Item)

Exhibit C

Department of Housing and Urban
Development

Public and Indian Housing
Labor Relations

OMB Approval No. 2577-0157 (exp. 01/31/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (without maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

~~Section I - Causes for All Non-Construction Contracts greater than \$100,000~~

1. Definitions

The following definitions are applicable to this contract:

- (a) 'Authority or Housing Authority (HA)' means the Housing Authority.
- (b) 'Contract' means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) 'Contractor' means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) 'Day' means calendar days, unless otherwise stated.
- (e) 'HUD' means the Secretary of Housing and Urban Development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

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- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
 - (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before 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 any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work) Office of Labor Relations

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 01/31/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 classifications and wage rates approved by HUD under subparagraph 1(b), 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 only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD 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.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/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 OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - ⓐ A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set forth those findings that are in dispute and the

reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
 - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the 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 provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. 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 federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Exhibit D

WD 05-2053 (Rev.-15) was first

/2012

REGISTER OF WAGE DETERMINATION
THE SERVICE CONTRACT ACT

DEPARTMENT OF LABOR

By direction of the Secretary of Labor

EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

Diane C. Koplewski Division of
Director Wage Determinations

Wage Determination No.: 2005-2053
Revision No.: 15
Date Of Revision: 06/13/2012

State: California

Area: California Counties of Riverside, San Bernardino

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		15.83
01012 - Accounting Clerk II		17.77
01013 - Accounting Clerk III		20.27
01020 - Administrative Assistant		28.08
01040 - Court Reporter		19.93
01051 - Data Entry Operator I		12.26
01052 - Data Entry Operator II		13.37
01060 - Dispatcher, Motor Vehicle		22.41
01070 - Document Preparation Clerk		13.75
01090 - Duplicating Machine Operator		13.75
01111 - General Clerk I		11.76
01112 - General Clerk II		14.92
01113 - General Clerk III		17.43
01120 - Housing Referral Assistant		21.90
01141 - Messenger Courier		11.15
01191 - Order Clerk I		16.98
01192 - Order Clerk II		18.53
01261 - Personnel Assistant (Employment) I		18.07
01262 - Personnel Assistant (Employment) II		20.20
01263 - Personnel Assistant (Employment) III		22.53
01270 - Production Control Clerk		23.51
01280 - Receptionist		14.51
01290 - Rental Clerk		16.61
01300 - Scheduler, Maintenance		17.39
01311 - Secretary I		17.39
01312 - Secretary II		19.45
01313 - Secretary III		21.90
01320 - Service Order Dispatcher		19.54
01410 - Supply Technician		26.82
01420 - Survey Worker		19.93
01531 - Travel Clerk I		13.19
01532 - Travel Clerk II		13.98
01533 - Travel Clerk III		14.85
01611 - Word Processor I		15.18
01612 - Word Processor II		16.87
01613 - Word Processor III		18.76
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		22.65
05010 - Automotive Electrician		22.18
05040 - Automotive Glass Installer		20.84
05070 - Automotive Worker		20.84
05110 - Mobile Equipment Servicer		19.16
05130 - Motor Equipment Metal Mechanic		23.56
05160 - Motor Equipment Metal Worker		20.84
05190 - Motor Vehicle Mechanic		23.56
05220 - Motor Vehicle Mechanic Helper		18.38
05250 - Motor Vehicle Upholstery Worker		20.40
05280 - Motor Vehicle Wrecker		20.84
05310 - Painter, Automotive		22.18
05340 - Radiator Repair Specialist		20.84
05370 - Tire Repairer		13.98
05400 - Transmission Repair Specialist		23.56
07000 - Food Preparation And Service Occupations		
07010 - Baker		14.36
07041 - Cook I		13.10
07042 - Cook II		14.36
07070 - Dishwasher		10.29
07130 - Food Service Worker		11.20
07210 - Meat Cutter		17.59
07260 - Waiter/Waitress		10.26

09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	19.84
09040 - Furniture Handler	12.46
09080 - Furniture Refinisher	18.16
09090 - Furniture Refinisher Helper	14.86
09110 - Furniture Repairer, Minor	17.40
09130 - Upholsterer	18.16
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	11.76
11060 - Elevator Operator	11.76
11090 - Gardener	19.21
11122 - Housekeeping Aide	12.58
11150 - Janitor	14.04
11210 - Laborer, Grounds Maintenance	14.40
11240 - Maid or Houseman	10.16
11260 - Pruner	13.27
11270 - Tractor Operator	18.21
11330 - Trail Maintenance Worker	14.40
11360 - Window Cleaner	16.17
12000 - Health Occupations	
12010 - Ambulance Driver	17.85
12011 - Breath Alcohol Technician	17.82
12012 - Certified Occupational Therapist Assistant	28.73
12015 - Certified Physical Therapist Assistant	26.89
12020 - Dental Assistant	17.27
12025 - Dental Hygienist	40.12
12030 - EKG Technician	25.07
12035 - Electroneurodiagnostic Technologist	25.07
12040 - Emergency Medical Technician	17.85
12071 - Licensed Practical Nurse I	18.38
12072 - Licensed Practical Nurse II	20.68
12073 - Licensed Practical Nurse III	23.72
12100 - Medical Assistant	14.26
12130 - Medical Laboratory Technician	19.73
12160 - Medical Record Clerk	15.93
12190 - Medical Record Technician	18.17
12195 - Medical Transcriptionist	18.08
12210 - Nuclear Medicine Technologist	39.64
12221 - Nursing Assistant I	10.19
12222 - Nursing Assistant II	11.46
12223 - Nursing Assistant III	12.50
12224 - Nursing Assistant IV	14.03
12235 - Optical Dispenser	15.70
12236 - Optical Technician	14.87
12250 - Pharmacy Technician	17.83
12280 - Phlebotomist	14.03
12305 - Radiologic Technologist	25.24
12311 - Registered Nurse I	31.47
12312 - Registered Nurse II	38.49
12313 - Registered Nurse II, Specialist	38.49
12314 - Registered Nurse III	48.20
12315 - Registered Nurse III, Anesthetist	48.20
12316 - Registered Nurse IV	57.77
12317 - Scheduler (Drug and Alcohol Testing)	25.09
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	21.72
13012 - Exhibits Specialist II	26.91
13013 - Exhibits Specialist III	35.57
13041 - Illustrator I	21.72
13042 - Illustrator II	26.91
13043 - Illustrator III	34.63
13047 - Librarian	29.81
13050 - Library Aide/Clerk	16.49
13054 - Library Information Technology Systems Administrator	26.91
13058 - Library Technician	22.40
13061 - Media Specialist I	19.42
13062 - Media Specialist II	21.72
13063 - Media Specialist III	24.22
13071 - Photographer I	16.93
13072 - Photographer II	18.94
13073 - Photographer III	24.13
13074 - Photographer IV	32.91
13075 - Photographer V	39.80
13110 - Video Teleconference Technician	18.25
14000 - Information Technology Occupations	
14041 - Computer Operator I	17.82
14042 - Computer Operator II	19.93
14043 - Computer Operator III	22.89
14044 - Computer Operator IV	25.73
14045 - Computer Operator V	28.50

14071	- Computer Programmer I	(see 1)	27.07
14072	- Computer Programmer II	(see 1)	
14073	- Computer Programmer III	(see 1)	
14074	- Computer Programmer IV	(see 1)	
14101	- Computer Systems Analyst I	(see 1)	
14102	- Computer Systems Analyst II	(see 1)	
14103	- Computer Systems Analyst III	(see 1)	
14150	- Peripheral Equipment Operator		17.82
14160	- Personal Computer Support Technician		25.73
15000	- Instructional Occupations		
15010	- Aircrew Training Devices Instructor (Non-Rated)		34.73
15020	- Aircrew Training Devices Instructor (Rated)		42.03
15030	- Air Crew Training Devices Instructor (Pilot)		50.37
15050	- Computer Based Training Specialist / Instructor		34.73
15060	- Educational Technologist		39.97
15070	- Flight Instructor (Pilot)		50.37
15080	- Graphic Artist		22.59
15090	- Technical Instructor		21.28
15095	- Technical Instructor/Course Developer		26.03
15110	- Test Proctor		18.40
15120	- Tutor		18.40
16000	- Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010	- Assembler		9.67
16030	- Counter Attendant		9.67
16040	- Dry Cleaner		12.40
16070	- Finisher, Flatwork, Machine		9.67
16090	- Presser, Hand		9.67
16110	- Presser, Machine, Drycleaning		9.67
16130	- Presser, Machine, Shirts		9.67
16160	- Presser, Machine, Wearing Apparel, Laundry		9.67
16190	- Sewing Machine Operator		13.33
16220	- Tailor		14.24
16250	- Washer, Machine		10.49
19000	- Machine Tool Operation And Repair Occupations		
19010	- Machine-Tool Operator (Tool Room)		18.83
19040	- Tool And Die Maker		21.83
21000	- Materials Handling And Packing Occupations		
21020	- Forklift Operator		14.58
21030	- Material Coordinator		22.14
21040	- Material Expediter		22.14
21050	- Material Handling Laborer		16.24
21071	- Order Filler		14.17
21080	- Production Line Worker (Food Processing)		14.58
21110	- Shipping Packer		15.08
21130	- Shipping/Receiving Clerk		15.08
21140	- Store Worker I		10.87
21150	- Stock Clerk		15.52
21210	- Tools And Parts Attendant		14.58
21410	- Warehouse Specialist		14.58
23000	- Mechanics And Maintenance And Repair Occupations		
23010	- Aerospace Structural Welder		27.91
23021	- Aircraft Mechanic I		26.83
23022	- Aircraft Mechanic II		28.31
23023	- Aircraft Mechanic III		29.39
23040	- Aircraft Mechanic Helper		18.96
23050	- Aircraft, Painter		24.00
23060	- Aircraft Servicer		21.46
23080	- Aircraft Worker		22.69
23110	- Appliance Mechanic		21.63
23120	- Bicycle Repairer		13.98
23125	- Cable Splicer		31.83
23130	- Carpenter, Maintenance		27.67
23140	- Carpet Layer		23.38
23160	- Electrician, Maintenance		29.81
23181	- Electronics Technician Maintenance I		25.49
23182	- Electronics Technician Maintenance II		27.44
23183	- Electronics Technician Maintenance III		28.89
23260	- Fabric Worker		19.50
23290	- Fire Alarm System Mechanic		21.08
23310	- Fire Extinguisher Repairer		18.50
23311	- Fuel Distribution System Mechanic		27.85
23312	- Fuel Distribution System Operator		20.98
23370	- General Maintenance Worker		21.13
23380	- Ground Support Equipment Mechanic		26.83
23381	- Ground Support Equipment Servicer		21.46
23382	- Ground Support Equipment Worker		22.69
23391	- Gunsmith I		18.50
23392	- Gunsmith II		21.93
23393	- Gunsmith III		24.85
23410	- Heating, Ventilation And Air-Conditioning Mechanic		23.79

23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	25.44
23430 - Heavy Equipment Mechanic	25.21
23440 - Heavy Equipment Operator	29.54
23460 - Instrument Mechanic	27.28
23465 - Laboratory/Shelter Mechanic	23.62
23470 - Laborer	12.83
23510 - Locksmith	19.84
23530 - Machinery Maintenance Mechanic	27.12
23550 - Machinist, Maintenance	24.78
23580 - Maintenance Trades Helper	13.51
23591 - Metrology Technician I	27.28
23592 - Metrology Technician II	28.38
23593 - Metrology Technician III	30.20
23640 - Millwright	22.51
23710 - Office Appliance Repairer	20.06
23760 - Painter, Maintenance	21.05
23790 - Pipefitter, Maintenance	25.18
23810 - Plumber, Maintenance	23.72
23820 - Pneudraulic Systems Mechanic	24.85
23850 - Rigger	24.85
23870 - Scale Mechanic	21.93
23890 - Sheet-Metal Worker, Maintenance	22.86
23910 - Small Engine Mechanic	17.79
23931 - Telecommunications Mechanic I	24.47
23932 - Telecommunications Mechanic II	25.86
23950 - Telephone Lineman	23.53
23960 - Welder, Combination, Maintenance	19.51
23965 - Well Driller	28.17
23970 - Woodcraft Worker	24.85
23980 - Woodworker	16.95
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	13.05
24580 - Child Care Center Clerk	16.40
24610 - Chore Aide	9.75
24620 - Family Readiness And Support Services Coordinator	13.84
24630 - Homemaker	17.77
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	25.82
25040 - Sewage Plant Operator	26.22
25070 - Stationary Engineer	25.82
25190 - Ventilation Equipment Tender	18.08
25210 - Water Treatment Plant Operator	26.22
27000 - Protective Service Occupations	
27004 - Alarm Monitor	19.31
27007 - Baggage Inspector	13.15
27008 - Corrections Officer	31.01
27010 - Court Security Officer	31.00
27030 - Detection Dog Handler	15.95
27040 - Detention Officer	31.01
27070 - Firefighter	25.20
27101 - Guard I	13.15
27102 - Guard II	15.95
27131 - Police Officer I	36.78
27132 - Police Officer II	40.87
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	12.51
28042 - Carnival Equipment Repairer	13.48
28043 - Carnival Equipment Worker	9.48
28210 - Gate Attendant/Gate Tender	14.46
28310 - Lifeguard	12.86
28350 - Park Attendant (Aide)	16.18
28510 - Recreation Aide/Health Facility Attendant	11.81
28515 - Recreation Specialist	19.86
28630 - Sports Official	12.86
28690 - Swimming Pool Operator	18.32
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	21.99
29020 - Hatch Tender	21.99
29030 - Line Handler	21.99
29041 - Stevedore I	21.28
29042 - Stevedore II	23.67
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	39.85
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	27.98
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	30.26
30021 - Archeological Technician I	23.33
30022 - Archeological Technician II	24.00
30023 - Archeological Technician III	34.21
30030 - Cartographic Technician	34.35

30040	- Civil Engineering Technician	27.74
30061	- Drafter/CAD Operator I	24.64
30062	- Drafter/CAD Operator II	27.72
30063	- Drafter/CAD Operator III	30.79
30064	- Drafter/CAD Operator IV	37.88
30081	- Engineering Technician I	19.68
30082	- Engineering Technician II	22.09
30083	- Engineering Technician III	24.70
30084	- Engineering Technician IV	30.60
30085	- Engineering Technician V	37.43
30086	- Engineering Technician VI	45.29
30090	- Environmental Technician	26.89
30210	- Laboratory Technician	23.13
30240	- Mathematical Technician	33.92
30361	- Paralegal/Legal Assistant I	21.25
30362	- Paralegal/Legal Assistant II	26.32
30363	- Paralegal/Legal Assistant III	32.20
30364	- Paralegal/Legal Assistant IV	38.69
30390	- Photo-Optics Technician	33.63
30461	- Technical Writer I	23.87
30462	- Technical Writer II	29.19
30463	- Technical Writer III	35.70
30491	- Unexploded Ordnance (UXO) Technician I	25.32
30492	- Unexploded Ordnance (UXO) Technician II	30.64
30493	- Unexploded Ordnance (UXO) Technician III	36.72
30494	- Unexploded (UXO) Safety Escort	25.32
30495	- Unexploded (UXO) Sweep Personnel	25.32
30620	- Weather Observer, Combined Upper Air Or	(see 2) 29.03
Surface Programs		
30621	- Weather Observer, Senior	(see 2) 32.23
31000	- Transportation/Mobile Equipment Operation Occupations	
31020	- Bus Aide	12.97
31030	- Bus Driver	19.85
31043	- Driver Courier	13.10
31260	- Parking and Lot Attendant	10.20
31290	- Shuttle Bus Driver	14.48
31310	- Taxi Driver	11.90
31361	- Truckdriver, Light	14.48
31362	- Truckdriver, Medium	21.82
31363	- Truckdriver, Heavy	21.78
31364	- Truckdriver, Tractor-Trailer	21.78
99000	- Miscellaneous Occupations	
99030	- Cashier	12.13
99050	- Desk Clerk	11.25
99095	- Embalmer	22.03
99251	- Laboratory Animal Caretaker I	12.73
99252	- Laboratory Animal Caretaker II	13.81
99310	- Mortician	25.51
99410	- Pest Controller	16.58
99510	- Photofinishing Worker	15.19
99710	- Recycling Laborer	20.68
99711	- Recycling Specialist	26.15
99730	- Refuse Collector	17.96
99810	- Sales Clerk	17.13
99820	- School Crossing Guard	10.19
99830	- Survey Party Chief	38.64
99831	- Surveying Aide	20.42
99832	- Surveying Technician	27.93
99840	- Vending Machine Attendant	14.10
99841	- Vending Machine Repairer	16.77
99842	- Vending Machine Repairer Helper	14.10

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.71 per hour or \$148.40 per week or \$643.07 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in

accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an

adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A link to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.