ATTACHMENT F – EXEMPLAR AGREEMENT

RD:KWF
2/22/2006

**AGREEMENT FOR DESIGN BUILD SERVICES
FOR AIRPORT IMPROVEMENT PROJECTS AT
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
BETWEEN
THE CITY OF SAN JOSE
AND
[DESIGN BUILD ENTITY]**

THIS AGREEMENT is made and entered into this _____ day of _____ 2006, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and _____, a (hereinafter "DESIGN BUILDER").

R E C I T A L S

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

DESIGN BUILDER shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from _____ to _____, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of DESIGN BUILDER are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

A. The compensation to be paid to DESIGN BUILDER for all Design Services, including both payment for professional services and reimbursable expenses, shall not exceed _____Dollars ($_____). The rate and schedule of payment for Design Services is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

B. The compensation to be paid to DESIGN BUILDER for Construction Services for all or any portion of the Project shall be subject to the agreement of the parties, as set out in EXHIBIT D.

SECTION 5. METHOD OF PAYMENT.

For Design Services, each month, DESIGN BUILDER shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures. Payment for Construction Services shall be made pursuant to the City's 1992 Standard Specifications.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that DESIGN BUILDER, in the performance of the work and services agreed to be performed by DESIGN BUILDER, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, DESIGN BUILDER shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and DESIGN BUILDER hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of DESIGN BUILDER are material considerations for this AGREEMENT. DESIGN BUILDER shall not assign or transfer any interest in this AGREEMENT nor the performance of any of DESIGN BUILDER's obligations hereunder, without the prior written consent of CITY, and any attempt by DESIGN BUILDER to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

DESIGN BUILDER shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by DESIGN BUILDER's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

DESIGN BUILDER agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of CITY of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. DESIGN BUILDER agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

DESIGN BUILDER shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

CITY's Director of Aviation is empowered to exercise CITY's termination rights under this Section on behalf of CITY.

A. Design Services

1. At any time, CITY shall have the right to terminate all or any portion of the Design Services under this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.

2. In the event of termination of all or any portion of the Design Services, DESIGN BUILDER shall deliver to CITY copies of all reports, documents, and other work performed by DESIGN BUILDER under this AGREEMENT for that portion of the Design Services, and upon receipt thereof, CITY shall pay DESIGN BUILDER for that portion of the terminated Design Services that has been performed by DESIGN BUILDER and reimbursable expenses incurred to the date of termination.

B. Construction

Termination of all or any portion of the Construction Work under this AGREEMENT shall be subject to Section 8-1.11 of the Standard Specifications.

C. Entire Agreement

Upon the occurrence of an Event of Default by DESIGN BUILDER, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT as provided in this Section.

1. Events of Default. The following constitute Events of Default by DESIGN BUILDER:

a. The failure of DESIGN BUILDER to obtain the approval of CITY before it makes a material change in its joint venture agreement, as approved by CITY.

b. Any material misrepresentation, whether negligent or willful and whether in the negotiation or performance of this AGREEMENT, made by DESIGN BUILDER to CITY.

c. Any change in ownership or control of DESIGN BUILDER, without the prior written approval of CITY, which approval will not be unreasonably withheld.

d. Failure to begin any Design Services or Work at the time specified in this AGREEMENT.

e. Failure to perform any Design Services or Work with sufficient workers and equipment or with sufficient materials to insure the completion of Design Services or Work or any part of the Design Services or Work within the time specified in this AGREEMENT.

f. Material failure to perform pursuant to the terms of this AGREEMENT or the CONTRACT DOCUMENTS.

g. Failure to remove materials, repair, or promptly replace Work that was rejected by CITY as defective or unsuitable pursuant to the termis of this AGREEMENT.

h. Unauthorized discontinuance or suspension of Design Services or the Work.

i. Insolvency, bankruptcy, or assignment for the benefit of creditors that negatively impacts DESIGN BUILDER's ability to pay Design Subconsultants and Subcontractors or to perform the Work.

j. Material failure to observe Federal, State, local or Airport safety and security requirements.

k. Failure of DESIGN BUILDER or any of the members of its joint venture to comply with any other term of this AGREEMENT that states an event of default, and the failure of DESIGN BUILDER or the failure of any of the members of its joint venture to cure the default within the time frame provided for in this AGREEMENT, if any.

l. Failure to promptly re-perform, at CITY's request, within a reasonable time, Design Services or Work that was rejected as erroneous or unsatisfactory.

m. Material failure to comply with any Environmental Laws.

2. Notice and Opportunity to Cure

a. When the Director of Aviation gives DESIGN BUILDER notice in writing of one or more Events of Default, the Director of Aviation may, in his sole discretion, direct DESIGN BUILDER to:

(i) cure the Event of Default within ten (10) days of receipt of the notice; or

(ii) promptly take material steps within ten (10) days of receipt of the notice to commence to cure the Event of Default and diligently prosecute and

complete such cure by the date the Director of Aviation specifies in the notice.

b. Whether the Director of Aviation requires DESIGN BUILDER to cure within ten (10) days, or to promptly take material steps within ten (10) days to commence to cure, DESIGN BUILDER shall diligently prosecute such cure until the Events of Default are corrected to the satisfaction of the Director of Aviation.

c. If the DESIGN BUILDER has neither cured within ten (10) days, nor taken material steps within ten (10) days to begin to cure, as directed by the Director of Aviation, then the Director of Aviation may declare that this AGREEMENT is terminated for default. The Director of Aviation's declaration of termination will be final and effective upon giving the notice of termination. Written notification of notice to cure and termination for default will be provided to DESIGN BUILDER and surety by the Director of Aviation. The failure of the Director of Aviation to declare a default by DESIGN BUILDER within ten (10) Days does not waive CITY's right to terminate pursuant to the cure notice.

3. Remedies. Upon an Event of Default, CITY may invoke any or all of the following remedies:

a. The right of set off against any payments due or to become due to DESIGN BUILDER.

b. The right to take over and complete the Work, or any part thereof, either directly or through others. CITY's right to take over and complete the Work shall include CITY's right to use material and equipment, whether owned or leased, which is within the scope of the Work or necessary for the completion thereof which has been paid for by CITY (whether located on or off the site). DESIGN BUILDER will receive no further payment, if any, until the Work is completed.

c. In the event of termination, all costs and changes incurred by CITY, together with the cost of completing the Work, will be deducted from any moneys due or which may become due to DESIGN BUILDER. In case the expense so incurred by CITY will be less than the sum which would have been payable under this AGREEMENT, if it had been completed by DESIGN BUILDER and had not been forfeited by DESIGN BUILDER, then DESIGN BUILDER will be entitled to receive the difference, subject to any claims or liens thereon, which may have been filed or any prior assignment filed with CITY. In case the expense incurred by City will exceed the sum which would have been payable under this AGREEMENT, DESIGN BUILDER and the surety will be liable and will pay to CITY the amount of such excess.

SECTION 12. GOVERNING LAW.

CITY and DESIGN BUILDER agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

DESIGN BUILDER shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for DESIGN BUILDER in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

A. All reports, documents or other materials, including all copyrights inherent in them or their preparation, developed or discovered by DESIGN BUILDER or any other person engaged directly or indirectly by DESIGN BUILDER to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use. All drawings, specifications and copies thereof produced by or for DESIGN BUILDER under this AGREEMENT are the property of CITY, and they are not to be used by DESIGN BUILDER on other work.

B. DESIGN BUILDER will deliver, or cause to be delivered, at any time during the term of this AGREEMENT all documents, including but not limited to drawings, models, specifications, estimates, reports, studies, maps, and computations, in whatever form, prepared by or for CITY, under the terms of this AGREEMENT, to CITY promptly upon reasonable demand therefor or upon termination or completion of the Work hereunder. In the event DESIGN BUILDER fails to make

such delivery, DESIGN BUILDER will pay to CITY all damages CITY may sustain by reason thereof.

C. Copyright Ownership

1. DESIGN BUILDER and CITY intend that, to the extent permitted by law, the Deliverables to be produced by DESIGN BUILDER at CITY's instance and expense under this AGREEMENT are conclusively considered "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq., and that CITY will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

2. To the extent that any Deliverable does not qualify as a "work made for hire," DESIGN BUILDER hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to CITY, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for CITY under this AGREEMENT, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. DESIGN BUILDER will, and will cause all of its Design Subconsultants and Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that CITY may reasonably request in order to

assist CITY in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of CITY. DESIGN BUILDER warrants to CITY, its successors and assigns, that on the date of transfer Design Broider is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. DESIGN BUILDER further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. DESIGN BUILDER warrants and represents that the Deliverables are complete, entire and comprehensive, and that the Deliverables will constitute works of original authorship.

SECTION 16. WAIVER.

DESIGN BUILDER agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by DESIGN BUILDER shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. DESIGN BUILDER'S BOOKS AND RECORDS.

A. DESIGN BUILDER shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by

law, from the date of final payment to DESIGN BUILDER pursuant to this AGREEMENT.

B. DESIGN BUILDER shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at DESIGN BUILDER's address indicated for receipt of notices in this AGREEMENT.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of DESIGN BUILDER's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by DESIGN BUILDER, DESIGN BUILDER's representatives, or DESIGN BUILDER's successor-in-interest.

SECTION 18. GIFTS.

A. DESIGN BUILDER is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.

B. DESIGN BUILDER agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by DESIGN BUILDER. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 19. DISQUALIFICATION OF FORMER EMPLOYEES.

DESIGN BUILDER is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). DESIGN BUILDER shall not utilize either directly or indirectly any officer, employee, or agent of DESIGN BUILDER to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

To DESIGN BUILDER:

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 22. PRIOR AGREEMENTS, AMENDMENTS AND CONTRACT DOCUMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT. In addition to any Exhibits to this

AGREEMENT, the following documents shall be deemed to be included and incorporated in this AGREEMENT as if fully set out herein:

A. DESIGN BUILDER'S Lump Sum or Guaranteed Maximum Price Proposals, once accepted by CITY.

B. Change Orders

C. Program Criteria Document as approved by CITY.

D. Design Documents prepared by DESIGN BUILDER and as approved by CITY.

E. City of San Jose July 1992 Standard Specifications, as revised pursuant to EXHIBIT P, which is attached hereto and incorporated herein.

SECTION 23. ORDER OF PRECEDENCE.

In the event of any conflict, inconsistency or discrepancy between any proviston of this AGREEMENT and any provision of the CONTRACT DOCUMENTS identified in Section 23 above, the order of precedent shall, unless specifically set forth in this AGREEMENT to the contrary, be as follows: (1) the agreed upon Lump Sum or Guarantee Maximum Price Proposal, but only to the extent it expressly and conspicuously identifies the parts of this AGREEMENT it modffies; 2) Change Orders; 3) this AGREEMENT; 4) the Program Criteria Document; 5) Design Documents prepared by the DESIGN BUILDER and approved by CITY; 6) City of San Jose July 1992 Standard Specifications.

SECTION 24. SEVERABILITY.

If any provisions of this AGREEMENT will be held or deemed to be or will in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law, or public policy, or for any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this AGREEMENT will not affect the remaining portions of this AGREEMENT or any part thereof.

SECTION 25. NO OMISSIONS.

DESIGN BUILDER acknowledges that DESIGN BUILDER was given ample opportunity and time and was requested by CITY to review thoroughly all documents forming this AGREEMENT before signing this AGREEMENT (or, for those documents that are not finalized prior to the execution of this AGREEMENT, before DESIGN BUILDER's submission of the Lump Sum or Guaranteed Maximum Price Proposal) in order that it might request inclusion in this AGREEMENT of any statement, representation, promise or provision that it desired or on which it wished to place reliance. DESIGN BUILDER did so review those documents, and either every such statement, representation, promise or provision has been included in this AGREEMENT or else, if omitted,

DESIGN BUILDER relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this AGREEMENT in its entirety without claiming reliance on the omitted statement or making any other claim on account of the ormssion.

SECTION 26. NEGOTIATED AGREEMENT.

This AGREEMENT was the result of negotiations between CITY and DESIGN BUILDER, and this AGREEMENT has been reviewed by CITY, DESIGN BUILDER and their respective counsel. Accordingly, this AGREEMENT shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

SECTION 27. JOINT VENTURE MEMBERS.

If any member of the joint venture which is DESIGN BUILDER fails to observe or perform any of the material terms or conditions of this AGREEMENT, CITY shall have the right to demand that the joint venture member be removed as a member of DESIGN BUILDER. Upon receipt of a written demand from CITY for a member's removal, DESIGN BUILDER shall promptly remove the member from its joint venture. If DESIGN BUILDER refuses or fails to remove the member in question, CITY may declare DESIGN BUILDER to be in default under Section 11, "Termination,"of this AGREEMENT.

SECTION 28. PARTNERING.

CITY and DESIGN BUILDER will use good faith efforts to promote the formation of a successful Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

The City and DESIGN BUILDER will engage in either Formal Partnering or Informal Partnering, depending upon the size of the project.

A. Formal Partnering. – In Formal Partnering the City and the DESIGN BUILDER implement the Partnering relationship through at least one pre-construction partnering workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The City and DESIGN BUILDER may participate in additional facilitated workshops during the life of the project as they mutually agree is necessary and appropriate.

1. For all projects in which the engineer's estimate for the entire project prior to advertising for bids is $10 million or more, the City and DESIGN BUILDER shall participate in Formal Partnering.

2. For all projects in which the engineer's estimate for the entire project prior to advertising for bids is $1 million or above but less than $10 million dollars, the DESIGN BUILDER may elect to require the parties to participate in Formal Partnering. The DESIGN BUILDER shall elect Formal Partnering by submitting a request in writing to the Engineer after approval of the Contract.

3. The scheduling of a partnering workshop, selection of the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both parties. The parties shall used good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract where Formal Partnering is mandatory or as soon as reasonably possible following a DESIGN BUILDER's election to require Formal Partnering for all other projects.

4. The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by the City and DESIGN BUILDER. These costs may be provided elsewhere in this Contract either as an allowance item or a specific bid item. If not, then the Engineer may issue a change order in the amount of one-half of the estimated cost of the facilitator and the partnering workshops.

5. The division of cost for the facilitator and partnering workshops will be made by determining the cost in conformance with the provisions in Section 9-

1.03B, "Work Performed By Special Forces or Other Special Services," of the Standard Specifications, and paying to the DESIGN BUILDER one-half of that costs, except no markups will be allowed.

6. All other costs associated with Formal Partnering will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

B. Informal Partnering. In Informal Partnering the City and the DESIGN BUILDER will implement the Partnering relationship through partnering discussions that are not conducted by an independent facilitator. The City and DESIGN BUILDER may participate in additional unfacilitated partnering meetings during the life of the project as they mutually agree is necessary and appropriate.

The City and DESIGN BUILDER will engage in informal partnering as follows: (1) on all projects in which the Engineer's estimate for the entire project prior to advertising for bids is below $1 million, and (2) on all projects in which the the engineer's estimate for the entire project prior to advertising for bids is $1 million or above but less than $10 million and the DESIGN BUILDER has not elected Formal Partnering.

SECTION 29. CONTRACT PROVISIONS REQUIRED AS A CONDITION OF FEDERAL FUNDING.

EXHIBIT L, "Standard Federal Contract Clauses and Requirements for Construction Contracts" and EXHIBIT M, "Disadvantaged Business Enterprise Program Requirements" are attached hereto and incorporated herein by this reference.

SECTION 30. SUBCONSULTANTS.

A. Notwithstanding Section 7 above, DESIGN BUILDER may use the following designated subconsultant(s) in performing the following work under this AGREEMENT:

- _____
- _____

B. DESIGN BUILDER shall be responsible for directing the work of the above-named subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.

C. DESIGN BUILDER shall change or add subconsultants for Design Work only with the written approval of the CITY's Director of Public Works.

SECTION 31. EQUALITY ASSURANCE.

DESIGN BUILDER shall comply with the Nondiscrimination / Nonpreferential Treatment requirements set forth in EXHIBITS Q and R, which are attached hereto and incorporated herein, pursuant to Chapter 4.08 of the City of San Jose Municipal Code.

RD:KWF
2/22/2006

SECTION 31. WORKER'S COMPENSATION.

DESIGN BUILDER certifies that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and DESIGN BUILDER will comply with such provisions before commencing the performance of the work of this contract.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

_____

By_____

Sr. Deputy City Attorney

"DESIGN BUILDER"

, a

By_____
Name:
Title:

RD:KWF
2/22/2006

EXHIBIT A

RECITALS

WHEREAS, CITY conducted a request for proposals ("RFP") to select a design builder to design, build and deliver to CITY certain Airport Development Projects at Norman Y. Mineta San Jose International Airport ("Project");

WHEREAS, the Project consists of the total design, construction and furnishing of a Terminal Area Improvement Program, as described in, and in accordance with, the requirements of the RFP, complete with all appurtenances necessary to produce such facility;

WHEREAS, CITY is relying upon the information in DESIGN BUILDER'S Proposal ("Proposal") dated [DATE] to develop the design of the Project;

WHEREAS, DESIGN BUILDER has submitted its Joint Venture AGREEMENT to CITY for review, and CITY has approved it;

WHEREAS, CITY has selected DESIGN BUILDER for the Project based on its Proposal to design and develop Design Documents for the Project;

WHEREAS, if the parties agree to a Lump Sum Proposal or Guaranteed Maximum Price to be submitted by DESIGN BUILDER when the Design Documents for the Project are between 30% and 100% complete, DESIGN BUIDLER shall also construct the Project;

WHEREAS, notwithstanding the fact that CITY may direct DESIGN BUILDER to start construction-related activities during the design phase of the Project, until and unless the parties agree to a Lump Sum Proposal or Guaranteed Maximum Price, this AGREEMENT shall be deemed to be a contract for design and related professional services only;

WHEREAS, DESIGN BUILDER warrants that it is ready, willing and able to design and build the Projects pursuant to the terms and conditions of this AGREEMENT;

WHEREAS, DESIGN BUILDER has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain as DESIGN BUILDER to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

RD:KWF
2/22/2006

EXHIBIT B

SCOPE OF SERVICES

DESIGN BUILDER shall perform the following services:

A. General

DESIGN BUILDER shall provide and furmsh all items necessary to perform the Work and the Project as defined in this AGREEMENT, including but not limited to the following: all professional services, materials, parts, labor, supervision, coordination, administration, equipment, tools, temporary light and power, shop drawings, studies, reports, schematic drawings, design development drawings, construction drawings, and incidentals reqmred by the Contract Documents and desirable for the full completion of the Work, whether or not particularly shown, described, or specified in this AGREEMENT. DESIGN BUILDER'S Lump Sum or Guaranteed Maximum Price Proposals shall include all costs relating to, or associated with, the foregoing, including all hard costs, soft costs, overhead, and profit. No terms of this AGREEMENT, which more specifically indicate that DESIGN BUILDER will bear the costs of an item, or which more specifically indicate that an item will be performed at no additional cost to CITY, will be construed or interpreted to in any way limit the foregoing.

B. Relationship of the Parties

By entering into this AGREEMENT, DESIGN BUILDER accepts the relationship of trust and confidence established between it and CITY. DESIGN BUILDER shall furnish its reasonable professional skill and judgement and shall cooperate with the officials,

employees, and agents of CITY in furthering the interests of CITY. DESIGN BUILDER will furnish efficient business administration and superintendence and will use all reasonable efforts to perform the Work in an expeditious and economical manner consistent with the interests of CITY.

C. Construction Performance Bonds

The parties shall negotiate the forms, amounts and releases of security that shall be required for construction, and the agreement of the parties shall be included into the Lump Sum or Guaranteed Maximum Price Proposals.

D. Payment Bonds

Subject to the provisions of the California Public Contact Code, the parties shall negotiate the forms, amounts and releases of Payment Bonds that shall be required for construction, and the agreement of the parties shall be included into the Lump Sum or Guaranteed Maximum Price Proposals.

E. Deliverables

In carrying out its services, DESIGN BUILDER must prepare and provide to CITY for review and approval the Deliverables (including, but not limited to, Approved Project Procedures, Design Documents and detailed specifications), all as defined and further identified in Section F of this Scope of Services.

Each Deliverable shall be consistent with all requirements of this AGREEMENT, including the Program Criteria Document, and represent further development of prior

Deliverables and shall not change or omit previously approved features or elements unless such differences or dev*i*ations: (i) are expressly noted and identified in writing on the Deliverable, and expressly and unambiguously accepted by CITY in writing. Any review, approval, acceptance or payment for any or all of the Deliverables by CITY does not relieve DESIGN BUILDER of its responsibility to comply with the requirements of this AGREEMENT and shall not be construed as a waiver of the requirements of this AGREEMENT from which the Deliverables deviate, if any. This provision in no way limits CITY's rights against DESIGN BUILDER under this AGREEMENT.

F. Design Services

1. Construction Phasing

The Airport Improvement Projects will be construction in several phases. [INSERT DESCRIPTION OF PROJECTS AND PHASING HERE].

2. No Information Provided by CITY

CITY shall not be obligated to provide any information regarding the site or existing conditions. The parties intend for DESIGN BUILDER to be responsible for determining and providing all such information. Any information regarding the site or existing conditions that CITY does provide to DESIGN BUILDER is not warranted or represented by CITY to be accurate. DESIGN BUILDER will not be entitled to rely on any such information and if DESIGN BUILDER does rely on any such information, then DESIGN BUILDER does so at its own risk. When such information is provided by CITY, and it appears on Contract Documents prepared by another design professional,

DESIGN BUILDER acknowledges that the design professional and CITY have not verified such information. Site plans prepared by other design professionals are based on surveys performed by consultants, and have not been verified by CITY and the design professional. Site plans do not constitute any representation by the design professional and CITY to DESIGN BUIDLER of site boundaries or other characteristics.

3. Key Personnel

a. Upon award of the AGREEMENT, DESIGN BUILDER shall submit a project staff organizational chart that includes the names and resumes of employees proposed for key positions for the Project as identified on DESIGN BUILDER's Proposal, unless substitutions have been approved in writing by the CITY's Director of Aviation. The name and title of each individual indicated on the project staff organizational chart ("Key Personnel") shall be set forth in EXHIBIT F, "Key Personnel." All Key Personnel must have experience on projects of a like size and scope, and their responsibilities on those projects must have been as signfficant as and comparable in scope to the responsibilities he or she will have on this Project. All Key Personnel must be approved by CITY.

b. If any Key Personnel furnished by DESIGN BUILDER for the Project pursuant to the Key Personnel provisions under this Section should be unable to continue in the performance of assigned duties because of death, disability or termination, DESIGN BUILDER will promptly notify CITY, with an explanation of the circumstances. DESIGN BUILDER will not make changes in assignment of Key Personnel because of commitments not related to this AGREEMENT,

without CITY's prior written approval.

c. On request of CITY, DESIGN BUILDER will furnish to CITY within _____ (__) days the name of the person substituting for the individual unable to continue, together with any information CITY may require to judge the experience and competence of the substitute person. Upon CITY's approval, such substitute person will be assigned to the Project and if CITY rejects the substitute, DESIGN BUILDER will have _____ (__) days thereafter to submit a second substitute person. Such process will be repeated until a proposed replacement has been approved by CITY.

d. In the event that CITY determines that the performance of personnel of the DESIGN BUILDER assigned to this Project is at an unacceptable level, DESIGN BUILDER will remove any such personnel from the project and submit a substitute for CITY's approval pursuant to paragraph c above.

4. Design Services

Among other services, DESIGN BUILDER shall, subject to CITY's direction, prepare criteria for the design and construction of the Project, and DESIGN BUILDER shall prepare Design Documents and detailed specifications for the Project as set forth below.

a. Program Criteria (Pre-Design) Document

CITY shall provide its objectives, limitations, program requirements, Project budget requirements (including design-to-budget target), and other relevant information regarding the Project to DESIGN BUILDER ("Program Criteria Document"). The Parties acknowledge that CITY's Program Criteria Document is not more than _____ percent (__%) complete and that, with CITY's assistance, DESIGN BUILDER shall develop the Program Criteria Document to completion. In doing so, DESIGN BUILDER shall: (i) consult with CITY to further define and clarify CITY's requirements for the Project, and available data; (ii) identify, consult with, and analyze the requirements of governmental authorities having jurisdiction to approve parts of the Project; (iii) inspect existing site conditions; (iv) review laws, ordinances and regulations that are applicable to the design and construction of the Project, and correlate them to the Project; (v) identify the type and duration of manufacturers' warranties to be procured as part of the Project; (vi) include the design-to-budget target amount as one of the bases for the Program Criteria Document; (vii) format the Program Criteria Document into a report form which shall, as appropriate, contain schematic design layout, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements and considerations revolved; and (viii) perform any other reasonable task that is necessary to develop the Program Criteria Document to completion and to the reasonable satisfaction of CITY.

(1) CITY's Review of Program Criteria Document. DESIGN BUILDER shall furnish a draft of the Program Criteria Document to CITY no later than the Scope Confirmation Date identified in EXHIBIT G, "Key Project Dates."

(2) Revisions to Program Criteria Document. DESIGN BUILDER shall revise the Program Criteria Document in response to CITY's written comments, and shall

furnish a copy of the revised Program Criteria Document to CITY within _____ (__) days of reviewing it with CITY.

(3) Approval of Program Criteria Document. Once approved in writing by CITY, the Program Criteria Doucment shall become an AGREEMENT DOCUMENT and shall be one of the bases for the Design Documents to be prepared by DESIGN BUILDER.

(4) Modification to Program Criteria Document. CITY's approval of Design Documents that contain deviations, properly flagged by DESIGN BUILDER, from the Program Criteria Document shall be deemed to be a corresponding modification to the Program Criteria Document.

b. Design Documents

DESIGN BUILDER shall provide Design Documents for each major component of the Project based on the Program Criteria Document approved by CITY. The Design Documents shall include drawings, specifications and other documents that fix and describe the size and character of each component of the Project and shall include, among other things, building plans, sections, elevations, construction details and equipment layouts ("Design Documents"). The specifications shall identify all materials and systems in a level of detail satisfactory to CITY. DESIGN BUILDER shall submit Design Documents at various stages of completion (each referred to as a "Design Proposal Package") to CITY for review, evaluation, and comment ("Design Review") in accordance with the schedule set forth in paragraphs (2) through (5), below. DESIGN

BUILDER shall provide CITY with opportunities to perform continuous informal and unofficial reviews of DESIGN BUILDER's design and other documents while in progress ("Over-the-Shoulder Review" or "OTS Review"). Over-the-Shoulder Reviews may be conducted: (i) in DESIGN BUILDER's project office; (ii) in the offices of DESIGN BUILDER's Subcontractors performing design services; and/or (iii) in the presence of DESIGN BUILDER's personnel. OTS Reviews may include the review of progress prints, computer images, draft documents, working calculations, draft specifications, reports or other design documents as determined by CITY. OTS Reviews shall neither relieve DESIGN BUILDER from its duty to submit Design Proposal Packages and other documents for formal review, comment and approval by CITY as set forth in this Scope of Services and elsewhere in this Agreement, nor shall an OTS Review be deemed an approval by CITY of documents or other information reviewed.

(1) Computer Aided Design and Drafting. All required drawings for all Deliverables shall be prepared on a Computer Aided Design and Drafting System ("CADD"). The CADD documents for the entire Projecdt shall be delivered to CITY in _____ format. Drawing standards and requirements shall conform generally to the latest edition of the CITY's CADD standards. DESIGN BUILDER shall not deviate from the foregoing standards without the prior written approval of CITY.

(2) Schematic Design Documents. No later than the "First Schematic Design Submittal" date as set forth in EXHIBIT G, "Key Project Dates," DESIGN BUILDER shall submit to CITY for review and approval Schematic Design Documents as set forth in Exhibit H, "Detailed Scope of Design Work."

(3) 30% Complete Design Documents. No later than the "30% Submittal & L.S." date(s) as set forth m EXHIBIT G, "Key Project Dates," DESIGN BUILDER shall subnut the followmg Deliverables for review and approval by CITY: (i) 30% Complete Design Documents, and (ii) outline specifications; and the following Deliverables for review and approval by CITY: (a) a Lump Sum or Guaranteed Maximum Price Proposal that shall identify the cost to construct all or any portion of the Project covered by the 30% Complete Design Documents; (b) an estimate of cost to develop the Design Documents to 60% completion (including all reimbursable expenses); and (c) the cost to provide all professional services, including but not limited to architectural and engineering services, associated with the design and construction of all or any portion of the Project covered by the 30% Complete Design Documents (items (i) and (ii) and (a) through (c) above shall be referred to collectively as a "30% Design Proposal Package"). DESIGN BUILDER shall continue with development of the Design Documents unless directed in writing not to do so by CITY. After CITY approves the Design Documents and outline specifications, then CITY may, in its sole discretion: (i) approve the Lump Sum or Guaranteed Maximum Price Proposal and negotiate the Contract Price with DESIGN BUILDER pursuant to Section __, "Contract Price," and issue a Notice to Proceed with construction; (ii) direct DESIGN BUILDER to proceed with development of the Design Documents to 60% completion; (iii) terminate this AGREEMENT pursuant to Section 11, "Termination," if the Parties fail to agree on a Contract Price, and proceed with others as CITY deems appropriate to complete the design and/or construction of the Project: and/or (iv) take any other action it deems

appropriate for the Project. The 30% Complete Design Documents shall become Contract Documents after they are approved by CITY.

(4) 60% Complete Design Documents. If CITY directs DESIGN BUILDER to proceed with further development of the Design Documents pursuant to Paragraph 3 above, then no later than the "60% Submittal & L.S." date as set forth in Exhibit G, "Key Project Dates," DESIGN BUILDER shall submit the following documents for review and approval by CITY: i) 60% Complete Design Documents, and (ii) preliminary detailed specifications; and the following documents for review and approval by CITY: (a) a Lump Sum or Guaranteed Maximum Price Proposal that shall identify the cost to construct all or any portion of the Project covered by the 60% Complete Design Documents; (b) an estimate of cost to develop the Design Documents to 100% completion (including all reimbursable expenses); and (c) an estimate of the cost to provide all professional services, including but not limited to architectural and engineering services, assocmted with the design and construction of all or any portion of the Project covered by the 60% Complete Design Documents (items (i) and (n) and (a) through (c) above shall be referred to collectively as "60% Design Proposal Package"). DESIGN BUILDER shall continue with development of the Design Documents unless directed in writing not to do so by CITY. After CITY approves the 60% Complete Design Documents and preliminary detailed specifications, then CITY, in its sole discretion, may: (i) approve the Lump Sum or Guaranteed Maximum Price Proposal and negotiate the Contract Price with DESIGN BUILDER pursuant to Article VI, "Contract Price," and issue a Notice to Proceed with construction; (ii) direct DESIGN

BUILDER to proceed with development of the Design Documents to 100% completion, only, and not proceed with construction; (iii) terminate this AGREEMENT pursuant to Section 11, "Termination," if the Parties fail to agree on a Contract Price; and/or take any other action it deems appropriate for the Project. The 60% Complete Design Documents shall become Contract Documents after they are approved by CITY.

(5) 100% Complete Design Documents. CITY and DESIGN BUILDER acknowledge that Design Documents prepared for a design-build project ordinarily contain less detail than drawings prepared for traditional design-bid-build projects. Therefore, if CITY directs DESIGN BUILDER to prepare Design Documents that are 100% complete, but does not direct DESIGN BUILDER to proceed with construction of the Project, then DESIGN BUILDER's 100% complete Design Documents shall be prepared to that level of completeness ordinarily found in traditional design-bid-build projects of similar scope and magnitude. The 100% Design Documents shall become Contract Documents after they are approved by CITY.

c. Design Review Process

(1) Determination of Completion of Design Proposal Packages. The completion percentages set forth above shall be determined in the reasonable judgment of DESIGN BUILDER. However, after receipt of a 30% or 60% Design Proposal Package, and before proceeding with a Design Review, CITY may return any 30% or 60% Design Proposal Package that it determines to be insufficient, and

direct that DESIGN BUILDER develop the 30% or 60% Design Proposal Package to the extent required by this AGREEMENT. CITY's direction will: (i) be in writing; (ii) be provided within forty-five (45) Days following the receipt of the 30% or 60% Design Proposal Package; and (iii) specifically identify those portions of the 30% or 60% Design Proposal Package reqmnng further development and detail.

(2) Review Reports. CITY shall commence review of each Design Proposal Package and, within forty-five (45) Days from the receipt thereof, or the receipt of a response to a further development request pursuant to Paragraph 3(a), whichever is later, complete the review and furnish a written report ("Review Report") to DESIGN BUILDER setting forth comments, questions, directions and recommendations in connection with specific items set forth in the 30% or 60% Design Proposal Package, which CITY, in its reasonable discretion, believes may not satisfy the requirements of the Program Criteria Document, or previous instructions or approvals issued by CITY. DESIGN BUILDER shall attend meetings as requested by CITY to dIscuss CITY's comments and Review Reports. CITY's Review Reports do not constitute an undertaking on the part of CITY to assure or determine compliance with the Contract Documents.

(3) Interim Design Changes. After the Contract Price has been established pursuant to Section __, "Contract Price," DESIGN BUILDER may be entitled to an adjustment in the Contract Price and/or the Contract Time, as necessary, to compensate DESIGN BUILDER in accordance with Section __, "Changes in

the Work," and permit DESIGN BUILDER to properly design and construct, such items ("Interim Design Changes") as may be required in order to comply with the conclusions and instructions of CITY in a Review Report that are either: (i) inconsistent with, or deviate from, the Lump Sum or Guaranteed Maximum Price Proposal as accepted by CITY, or any prior Review Report, unless such inconsistency or deviation arises as a result of a failure in the Lump Sum or Guaranteed Maximum Price Proposal, or in prior approved Design Documents, to satisfy the requirements of this AGREEMENT; or (ii) inconsistent with, or deviate from, specifically stated requirements of the Program Criteria Document, or any other requirement of those Contract Documents developed by CITY. No request by CITY for design change shall enutle DESIGN BUILDER to an increase in the Contract Time or Contract Price unless DESIGN BUILDER has complied with the requirements of Section __, "Changes in the Work," and the notification provisions of that Section.

(4) Interim Design Change Request. Within fourteen (14) Days following DESIGN BUILDER's receipt of a Review Report, DESIGN BUILDER shall notify CITY in writing of any items set forth in a Review Report which, in DESIGN BUILDER's reasonable judgment, constitute an Interim Design Change (such notice referred to as a "Design Change Request"). Each Design Change Request shall set forth any proposed increased cost that DESIGN BUILDER attributes to such item and an estimated adjustment, if any, to the Contract Time, or a reasonable time limitation for providing notice of such increased cost or adjustment to the Contract Time. In the event that DESIGN BUILDER provides such reasonable time limitation, DESIGN BUILDER also shall provide notice of

such increased cost or adjustment.

(5) CITY's Acceptance or Rejection of Design Change Request. Upon receipt of a Design Change Request, CITY shall have the following options:

i. within _____ (__) days following the receipt of a Design Change Request, CITY may modify or revise those items in the Review Report that constitute an Interim Design Change as necessary to avoid any increase in the Contract Price or Contract Time; or

ii. reject a Design Change Request by written notice within _____ (__) Days of receipt of the Design Change Request, in which case DESIGN BUILDER and CITY shall attempt to resolve their disagreement and identify elements of the Design Change Request which can be resolved. Elements of the Design Change Request that cannot be resolved shall be deemed "Disputed Design Work." If such disagreement is not resolved within _____ (__) Days, then the items described in the Design Change Request for which there is no agreement, shall be identified and set forth in a schedule (hereinafter referred to as "Disputed Design Work Schedule") prepared and periodically updated by DESIGN BUILDER. Whenever possible, DESIGN BUILDER and CITY shall resolve items set forth in the Disputed Design Work Schedule, confirming such resolution in a written memorandum signed by both Parties. Any aems remaining unresolved on the Disputed Design Work

Schedule when or after the Lump Sum or Guaranteed Maximum Price Proposal is established, shall be resolved pursuant to Section __, "Disputes and Claims"; or

iii. direct DESIGN BUILDER in writing to commence and continue performance of items in the Disputed Work Schedule, even if there is a disagreement about entitlement and/or payment or there is a submittal of the Dispute to the Dispute Review Board (as defined in Section __, herein). DESIGN BUILDER shall perform all itmes placed on the Disputed Design Work Schedule, unless directed in writing not to do so by CITY.

(6) Disputed Design Work Schedule. If CITY does not, within the specified time limitations, either issue new instructions to DESIGN BUILDER or advise DESIGN BUILDER in writing of the disapproval of any Design change Request, then such Design Change Request shall be included in the Dispute Design Work Schedule.

G. Approved Project Procedures

By the Milestone Dates set forth in Exhibit G, "Key Project Dates," DESIGN BUILDER shall develop in conjunction with CITY and shall prepare and submit in writing for CITY's review and approval, procedures with regard to procurement, construction, project controls, project management and design for the duration of the Project, a list of categories of which procedures are listed in Exhibit I, "Approved Project Procedures," and any other mutually agreed upon categories of procedures. However, it is the *i*ntent

of this AGREEMENT that the Approved Project Procedures are solely for the purpose of adding additional and explanatory detail to the requirements of this AGREEMENT. In the event of such a contradiction or inconsistency, the provisions of the CONTRACT DOCUMENTS take precedence over an Approved Project Procedure. Once approved in writing by CITY, each procedure listed heretofore shall be deemed an "Approved Project Procedure" and shall be a material term of this AGREEMENT. The Approved Project Procedures are intended to supplement and further define the details of DESIGN BUILDER's performance and administration of the Project, but in no event are they to be interpreted to diminish DESIGN BUILDER's duties or obligations under this AGREEMENT or to impose additional duties or liabilities not otherwise set forth in this AGREEMENT on CITY.

H. Construction Services and Responsibility for the Work

DESIGN BUILDER will perform, or cause to be performed, all Work hereunder according to those standards for Work at the Airport promulgated by CITY, including but not limited to CITY's 1992 Standard Specifications, the Federal Aviation Administration ("FAA"), the Transportation Security Administration ("TSA") and any other Federal, State or other local governmental units. In the event of a conflict among these standards, DESIGN BUILDER shall notify CITY in writing of the details of the conflict and of DESIGN BUILDER's recommendation regarding the conflict and CITY shall determine and notify DESIGN BUILDER which standards shall govern.

1. General Conditions

Except as otherwise expressly provided in this AGREEMENT or any Contract

Document, DESIGN BUILDER shall perform the Work in accordance with CITY's 1992 Standard Specifications, and the Standard Federal Contract Clauses and Requirements for Construction Contracts, which are set forth in EXHIBIT L, which is attached hereto and incorporated herein.

2. DESIGN BUILDER's Construction Means and Methods

DESIGN BUILDER will be solely responsible for the means, methods, techniques, sequences and procedures of construction within the parameters set forth by CITY. Furthermore, DESIGN BUILDER agrees to provide CITY with complete access to those parts of the Work that will be identified after acceptance of the Lump Sum or Guaranteed Maximum Price Proposal. At any Hold Points as mutually agreed by the parties at the time of CITY's acceptance of the Lump Sum or Guaranteed Maximum Price Proposal, DESIGN BUILDER shall not proceed with any construction that will cover, conceal, or prevent access to such Work until CITY has had an opportunity to observe the Work. DESIGN BUILDER shall incorporate enough time in its Master CPM Schedule for CITY to observe at each Hold Point so that CITY's observations do not delay the progress of the Work. DESIGN BUILDER shall notify CITY in writing forty-eight (48) hours before a Hold Point is available for observation. CITY shall use itsbest efforts to observe the Work that is the subject of the Hold Point within twenty-four (24) hours of the commencement of the hold. If DESIGN BUILDER fails to provide CITY with timely notification as required by this paragraph, then DESIGN BUILDER solely shall be responsible for all costs caused by the lack of such notification, including but not limited to uncovering, recovering and reconstructing the Work to facilitate CITY's observations. Nothing in this Paragraph shall be deemed to limit DESIGN BUILDER's obligations to

provide CITY access to all Work as provided for in other parts of this Agreement, nor shall CITY's observations of the Work at Hold Points be construed to relieve DESIGN BUILDER of its obligations to correct theWork if defects are discovered after an observation.

3. Substantial Completion

The Work will be under the charge and care of DESIGN BUILDER until Substantial Completion of the Project, unless otherwise specified in the Contract Documents. Punch List Work will remain under the charge and control of DESIGN BUILDER until it is completed. DESIGN BUILDER will assume all responsibility for injury or damage to the Work by action of the elements and fire or from any other causes whatsoever, whether arising from the execuuon, or from the non-execution, of the Work. DESIGN BUILDER will rebuild, repair, restore and make good, at its expense, all injuries or damages to any portion of its Work occasioned by any of the above causes until Substantial Completion.

4. Equipment or Materials Furnished by CITY

When equipment or materials are furnished to DESIGN BUILDER by CITY for DESIGN BUILDER's use or inclusion in the Work, DESIGN BUILDER shall facilitate the inspection of such equipment or materials by the manufacturer if such inspection is necessary to validate the manufacturer's warranty for the benefit of CITY.

5. Supervision and Superintendence of the Work

DESIGN BUILDER shall personally supervise and superintend the Work, and will have as many job site superintendents at the site at all times as required for the Work. DESIGN BUILDER also will have one or more full time experienced and qualified project managers assigned to the Project.

6. Coordination With Other Contractors

a. CITY reserves the right to hire other contractors for performance of work in connection with the Project ("Other Contractors"). DESIGN BUILDER shall afford Other Contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work, and shall properly connect and coordinate the Work with the work of Other Contractors. With respect to each part of the work as to which CITY may enter into separate contracts, DESIGN BUILDER shall, as part of the Work, cooperate in the scheduling and coordination of work to be performed by each Other Contractor engaged by CITY, with the Work to be performed by DESIGN BUILDER. DESIGN BUILDER shall cooperate with CITY and Other Contractors, their subcontractors and any other entity revolved in the performance of any separate work. In order to cause the Work, and any separate work to be performed by Other Contractors, to be completed in an expeditious manner, DESIGN BUILDER agrees that it will use all reasonable efforts to ensure that Other Contractors have a reasonable opportunity to complete their work as and when required. CITY shall use reasonable efforts to include in its contracts with Other Contractors coordination clauses similar to this Paragraph. In addition, as provided in Section __, the parties may agree to assign CITY's rights in its contract with Other Contractors to DESIGN BUILDER.

b. Should DESIGN BUILDER cause damage to the Work or the property of CITY, or its tenants, DESIGN BUILDER shall promptly remedy such damage. Should DESIGN BUILDER cause damage to the work or property of any Other Contractor, DESIGN BUILDER shall promptly attempt to settle any resulting dispute or claim with such Other Contractor. If an Other Contractor or its subcontractor shall assert any claim against CITY on account of any claims, damages, demands, injury or death alleged to have been sustained, either in whole or in part, by the fault, negligent act, failure to act, error, omission, or breach of a material term of this AGREEMENT by DESIGN BUILDER, or by anyone for whom DESIGN BUILDER is responsible, then CITY shall notify DESIGN BUILDER, and DESIGN BUILDER shall defend and indemnify CITY from and against any and all such claims.damages, demands, injury or death arising from the assertion of any such claim. The indemnification provided hereto will be effective to the maximum extent allowed by applicable law. This indemnity extends to all legal costs including without limitauon the following: attorney fees, costs, liens,judgments, settlements, penalties, professional fees, or other expenses incurred by CITY, including but not limited to, fines and penalties imposed by public bodies and the reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this AGREEMENT. Further, the indemnity contained in this sect*i*on will survive the expiration or termination of this AGREEMENT.

c. If a dispute arises among DESIGN BUILDER, Other Contractors and CITY as ot the responsibility under the respective agreements for maintaining the site and adjacent property from from waste, materials and rubbish, then CITY may clean

up, or cause such clean up to be completed, and may allocate the cost among those responsible as CITY determines to be just.

7. On-Site Representative

DESIGN BUILDER shall designate an on-site representative of DESIGN BUILDER who shall be available at all times for on-site communications with CITY and DESIGN BUILDER's subcontractors.

8. Work Packages Before Acceptance of Lump Sum or Guaranteed Maximum Price Proposal

There are two types of work packages that, with CITY's prior written approval, may be executed by DESIGN BUILDER prior to CITY's acceptance of a Lump Sum or Guaranteed Maximum Price Proposal: (i) those that CITY may wish to have DESIGN BUILDER perform to further evaluate or assess site conditions, or to prepare the site for the start of future construction within the scope of this Agreement, including but not limited to the timing and/or budget limitations herefore determined by CITY; and (ii) those that DESIGN BUILDER may recommend executing on and around the site to provide substantive information required for the design. Some typical pre-Lump Sum or Guaranteed Maximum Price Proposal work packages may be as follows☹i) Site clearing and grubbing / utility location and identification; (ii) Soil studies and subsurface exploration; (iii) Exploratory investigation of building tie-in locations; (iv) Utility relocations / temporary utility installation; and (v) Site officeset-up.

If authorized in writing by CITY, work packages will be added to DESIGN BUILDER's Scope of Work pursuant to Section __, "Changes in the Work," and compensated in accordance with the terms of this AGREEMENT. All pre-Lump Sum or Guaranteed Maximum Price Proposal work packages shall be executed and administered by using the same payment and administrative procedures applicable to the Work after CITY's acceptance of a Lump Sum or Guaranteed Maximum Price Proposal.

9. Changes in the Work

Upon CITY's acceptance of the Lump Sum or Guaranteed Maximum Price Proposal by execution of a Contract Modification, Changes in the Work shall be govered by the CITY's 1992 Standard Specifications.

10. Subcontracting

DESIGN BUILDER shall be subject to the provisions of CITY's 1992 Standard Specifications regarding subcontractors, including but not limited to provisions for subcontractor substitutions, that have been listed by DESIGN BUILDER and approved by CITY as of the date of execution of this AGREEMENT. In the event that DESIGN BUILDER wishes to use subcontractors that have not been listed by DESIGN BUILDER and approved by CITY as of the date of execution of this AGREEMENT, DESIGN BUILDER shall solicit bids and award any such subcontracted work to the lowest responsible bidder. DESIGN BUILDER's subcontactor bidding procedures shall be subject to CITY's approval, which shall not be unreasonably withheld.

11. Time for Performance

a. Contract Time, Substantial Completion and Final Completion

The Contract Time is the period of time, measured in Calendar Days, allotted in DESIGN BUILDER's Lump Sum or Guaranteed Maximum Price Proposal for the Substantial Completion of the portion of the Work covered by the Lump Sum or Guaranteed Maximum Price Proposal. Substantial and Final Completion of the Work shall be determined pursuant to CITY's 1992 Standard Specifications.

b. Liquidated Damages for Delay

[Amount and scope to be determined, subject to negotiations]

12. Wage Rates

Attention is called to the fact that both federal (Davis-Bacon) and State of California Prevailing Wage Rate requirements apply to this Project. Not less than the greater of the federal Davis-Bacon wage rates or the General Prevailing Rate of Per Diem Wages and the General Prevailing Rates for holiday and overtime work must be paid on this project. Copies of the Prevailing Rate of Per Diem Wages are on file with CITY's Office of the City Clerk or CITY's Office of Equality Assurance and can be obtained by interested bidders from those offices. Davis-Bacon wage rates are included in EXHIBIT N, which is attached hereto and incorporated herein. Additional provisions regarding the Prevailing Wage Requirements are included in EXHIBIT O, Contract Provisions for

Labor Management, which is attached hereto and incorporated herein. All questions regarding prevailing wage should be directed to the CITY's Office of Equality Assurance at (408) 535-8430.

DESIGN BUILDER agrees to comply with all of the applicable provisions of Sections 1777.5 and 1777.6 of the Labor Code, which Sections are hereby specifically referred to, incorporated herein by reference and made a part hereof as though set forth at length herein.

RD:KWF
2/22/2006

EXHIBIT C

SCHEDULE OF PERFORMANCE

A. Design Services Schedule

[To be negotiated to meet the timeframes set out in the RFP]

B. Construction Services Schedule

[To be negotiated to meet the timeframes set out in the RFP]

RD:KWF
2/22/2006

EXHIBIT D

COMPENSATION

A. Design Services

1. CITY agrees to compensate DESIGN BUILDER at the hourly rate of _____ ($_____) for professional services performed in accordance with the terms and conditions of this AGREEMENT.

2. The maximum amount of compensation to be paid to DESIGN BUILDER under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Dollars ($0.00). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

3. Reimbursable expenses shall include:

A. Construction Services

1. Determination of the Contract Price.

CITY may begin to negotiate a Contract Price for Construction Services with DESIGN BUILDER after CITY approves DESIGN BUILDER's 30% Complete Design Documents. CITY may continue to negotiate through the time CITY approves DESIGN BUILDER's 100% Complete Design Documents. Negotiations between CITY and DESIGN BUILDER shall be conditioned upon DESIGN BUILDER's submission of a Lump Sum or Guaranteed Maximum Price Proposal that is based upon, and includes, the information

set forth in Section 1.(a) below, "Contents of DESIGN BUILDER's Lump Sum or Guaranteed Maximum Price Proposal." At the time the parties negotiate the Lump Sum or Guaranteed Maximum Price Proposal, CITY, in its sole and absolute discretion, may consider negotiating a formula that may permit DESIGN BUILDER to earn a bonus for early completion.

a. Contents of DESIGN BUILDER's Lump Sum or Guaranteed Maximum Price Proposal

DESIGN BUILDER's Lump Sum or Guaranteed Maximum Price Proposal shall be based upon the Program Criteria Document and the approved Design Documents to date. The Lump Sum or Guaranteed Maximum Price Proposal shall include the following: (i) a list of DESIGN BUILDER's deviations from the approved Program Criteria Document and approved Design Documents; (ii) a list of conditions that are contrary to the express terms of any Contract Document; (iii) the number of Days for Anticipated Adverse Weather Conditions (as defined in Section __), upon which DESIGN BUILDER's Master CPM Schedule is, or shall be, based; (iv) the date of Substantial Completion; (v) Milestone Dates (as defined in Section __, "Milestone Dates"); (vi) a proposed Master CPM Schedule; (vii) total cost to construct the portion of the Project covered by the Lump Sum or Guaranteed Maximum Price Proposal; (viii) the total cost to complete the design of the portion of the Project covered by the Lump Sum or Guaranteed Maximum Price Proposal; (ix) a Schedule of Values, as defined in Exhibit __, "List of Defined Terms;" (x) a list of unit prices for the removal, remediation and disposal of any Hazardous Materials identified on the Environmental Baseline; (xi) the forms and amounts, and the terms of reductions and releases of security and payment

bonds as negotiated between the Parties; (xii) the list of Construction Hold Points (to be negotiated by the parties upon CITY's acceptance of the Lump Sum or Guaranteed Maximum Price Proposal); (xiii) the list of CITY approved transfer stations and disposal sites to be used by DESIGN BUILDER during the course of the Project; and (xiv) any other information CITY reasonably may require.

b. Failure to Reach Agreement on the Contract Price

If, for any reason, CITY and DESIGN BUILDER cannot agree on a Contract Price within __ days after DESIGN BUILDER submits its Lump Sum or Guaranteed Maximum Price Proposal (or such extended period as may be mutually agreed upon by the parties), or if in its sole discretion CITY decides not to award construction of the Project to DESIGN BUILDER, then CITY may either: (1) direct DESIGN BUILDER to proceed with the development of the Design Documents if they are not yet 100% complete; (2) take possession of the Design Documents and direct DESIGN BUILDER to perform no further Design Services for the portion of the Project covered by the Lump Sum or Guaranteed Maximum Price Proposal; or (3) if the Design Documents are 100% complete, direct DESIGN BUILDER to prepare a bid solicitation and award a contract for the portion of the Project covered by the Lump Sum or Guaranteed Maximum Price Proposal, pursuant to the provisions of Section __ of this Agreement.

b. CITY's Acceptance of Lump Sum or Guaranteed Maximum Price Proposal

The Contract Price, the Contract Time and Milestone Dates shall be fixed by the Director of Aviation's acceptance in writing of DESIGN BUILDER's Lump Sum or

Guaranteed Maximum Price Proposal. Upon CITY's acceptance of the Lump Sum or Guaranteed Maximum Price Proposal by execution of a Contract Modification, the Lump Sum or Guaranteed Maximum Price Proposal shall become a Contract Document. The Contract Price shall include all costs of any kind to complete the portion of the Project covered by the Lump Sum or Guaranteed Maximum Price Proposal, including but not limited to, professional service fees, labor, equipment, materials, permits, licenses, and taxes necessary to perform the Work pursuant to the terms and conditions of this AGREEMENT.

2. Procedure for Payment and Release of Security.

Upon CITY's acceptance of the Lump Sum or Guaranteed Maximum Price Proposal by execution of a Contract Modification, procedures for payment and release of security shall be govered by the CITY's 1992 Standard Specifications.

RD:KWF
2/22/2006

EXHIBIT E

INSURANCE

[CONTRACT PROVISIONS TO BE DETERMINED – SEE RFP, SECTION 19]

RD:KWF
2/22/2006

EXHIBIT F

KEY PERSONNEL

RD:KWF
2/22/2006

EXHIBIT G

KEY PROJECT DATES

RD:KWF
2/22/2006

EXHIBIT H

DETAILED SCOPE OF DESIGN WORK

RD:KWF
2/22/2006

EXHIBIT I

APPROVED PROJECT PROCEDURES

RD:KWF
2/22/2006

EXHIBIT J

LIST OF DEFINED TERMS

Unless otherwise defined in this AGREEMENT, terms used in this AGREEMENT shall have the meanings provided in CITY's 1992 Standard Specifications.

1. "Construction Services" shall mean the construction work provided by DESIGN BUILDER as described in detail in EXHIBIT B to this AGREEMENT and as to be further detailed in DESIGN BUILDER'S Lump Sum or Guaranteed Maximum Price Proposal.

2. "Design Services" shall mean the design work provided by DESIGN BUILDER as described in detail in EXHIBIT H to this AGREEMENT.

RD:KWF
2/22/2006

EXHIBIT K

NOT USED

RD:KWF
2/22/2006

EXHIBIT L

STANDARD FEDERAL CONTRACT CLAUSES AND REQUIREMENTS FOR CONSTRUCTION CONTRACTS

Note: References to "Sponsor" in these Federal Certifications shall be deemed to mean the City of San José. References to "Contractor" or "Bidder/Offeror" shall mean DESIGN BUILDER.

1. General and Labor Clauses for All Construction Contracts and Subcontracts.

   a. Airport Improvement Program (AIP) Project. The work in this contract is intended to be included in an AIP Project, which is being undertaken and accomplished by the City of San Jose (Sponsor) in accordance with the terms and conditions of a grant agreement between the Sponsor and the United States under the Airport and Airway Safety and Capacity Expansion Act of 1987, pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

   b. Consent to Assignment. The contractor shall obtain the prior written consent of the Sponsor to any proposed assignment of any interest in or part of this contract.

   c. Convict Labor. No convict labor may be employed under this contract.

RD:KWF
2/22/2006

BUY AMERICAN PREFERENCES

(a) The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:

1. Steel and manufactured products. As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs b. (1) or (2) shall be treated as domestic.

2. Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.

3. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

(b) The successful bidder will be required to assure that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except those:

1. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

2. that the US Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or

3. that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

BUY AMERICAN CERTIFICATE

By submitting a bid/proposal under this solicitation, except for those items listed by the offeror below or on a separate and clearly identified attachment to this bid/proposal, the offeror certifies that steel and each manufactured product, are produced in the United States, as defined in the clause Buy American – Steel and Manufactured Products for Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

RD:KWF
2/22/2006

Offerors may obtain from the owner a listing of articles, materials and supplies excepted from this provision.

Product	Country of Origin

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for himself, his assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21), as they may be amended from time to time, (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract.

b. Nondiscrimination. The contractor, with regard to the work performed by him during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or

supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to his books, records, accounts, other sources of information and his facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts he has made to obtain the information.

e. Sanction for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as they or the FAA may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) Cancellation, termination, or suspension of the contract in whole or in part.

f. Incorporation of Provisions. The contractor shall include the provisions of paragraphs a through e in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

RD:KWF
2/22/2006

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

RD:KWF
2/22/2006

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, “Disclosure of Lobby Activities,” in accordance with its instructions.

RD:KWF
2/22/2006

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

RD:KWF
2/22/2006

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) – The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ***[specify number]*** days from the receipt of each payment the prime contractor receives from the City of San Jose. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Jose. This clause applies to both DBE and non-DBE subcontractors.

RD:KWF
2/22/2006

ENERGY CONSERVATION REQUIREMENTS

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

RD:KWF
2/22/2006

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

RD:KWF
2/22/2006

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

TRADE RESTRICTION CLAUSE

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

ATTACHMENT F – EXEMPLAR AGREEMENT

RD:KWF
2/22/2006

VETERAN'S PREFERENCE

In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 515l(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

RD:KWF
2/22/2006

DAVIS BACON REQUIREMENTS

1. Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto as EHXIBIT N and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, 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. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

I In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2 Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to David-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to

be maintained under paragraph 5.5(a)(3)(i) above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains the information required to be maintained under paragraph (3)(i) above and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee

of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are

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

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

5. Compliance With Copeland Act Requirements.

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

6. Subcontracts.

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

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance With Davis-Bacon and Related Act Requirements.

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

9. Disputes Concerning Labor Standards.

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

10. Certification of Eligibility.

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

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

RD:KWF
2/22/2006

EQUAL EMPLOYMENT OPPORTUNITY – 41 CFR PART 60-1.4(b)

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

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

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

RD:KWF
2/22/2006

CERTIFICATION OF NONSEGREGATED FACILITIES – 41 CFR PART 60-1.8

Notice to Prospective Federally Assisted Construction Contractors

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving federally-assisted construction contract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding $10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving subcontract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

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

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed subcontractors for specific time periods) she or he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

RD:KWF
2/22/2006

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION – 41 CFR PART 60-2

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

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

Timetables
Goals for minority participation for each trade (19.6%)
Goals for female participation in each trade (6.9%)

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

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the City of San Jose, Santa Clara County, California.

RD:KWF
2/22/2006

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS – 41 CFR Part 60.4.3

1. As used in these specifications:

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

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

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

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

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

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

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

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan.

Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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

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

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out

the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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

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

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

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

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

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendents, general foremen, etc., prior to the initiation of construction work at

any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

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

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

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

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

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its

efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

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

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

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

e.The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

RD:KWF
2/22/2006

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

RD:KWF
2/22/2006

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 29 CFR PART 5

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

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

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

4. Subcontractors.
The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

RD:KWF
2/22/2006

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and subcontractors agree:

a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

c. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

d. To include or cause to be included in any construction contract or subcontract which exceeds $ 100,000 the aforementioned criteria and requirements.

RD:KWF
2/22/2006

EXHIBIT M

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

POLICY STATEMENT

The City of San Jose has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26. The City receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the City assures that it will comply with 49 CFR Part 26.

It is the policy of the City of San Jose to ensure that Disadvantaged Business Enterprises (DBEs), as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our Policy to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- Assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The City's Director of the Office of Equality Assurance has been delegated as the DBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

DEFINITION OF TERMS

The terms used in the Program have the meanings defined in 49 CFR 26.5 and are as follows:

Disadvantaged Business Enterprise

Means a for-profit small business concern that is:

1) At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
3) Whose personal net worth does not exceed $750,000.

Socially and Economically Disadvantaged Individual

Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1) Black Americans which includes persons having origins in any of the Black racial groups of Africa;
2) Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
3) Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
4) Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
5) Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
6) Women;
7) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

Personal Net Worth

Means the net value of the assets of an individual remaining after total liabilities are deducted.

An individual's personal net worth does not include:

1) The individual's ownership interest in an applicant or participating DBE firm; or
2) The individual's equity in his or her primary place of residence.

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

The imposition of a personal net worth cap of $750,000 means that regardless of race, gender or size of their business, any individual whose personal net worth exceeds $750,000 is not considered economically disadvantaged and is not eligible for the DBE Program.

A. NONDISCRIMINATION

The City will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, sex or national origin.

In administering its DBE Program, the City will not directly or through contractual or other arrangements use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex or national origin.

QUOTAS

The City will not use quotas in any way in the administration of its DBE Program.

ATTACHMENT F – EXEMPLAR AGREEMENT

RD:KWF
2/22/2006

DBE LIAISON OFFICER (DBELO)

The City has designated the following individual as its DBE Liaison Officer:

Nina S. Grayson
Director, Office of Equality Assurance
City of San Jose
200 East Santa Clara Street, 5th Floor
San Jose, CA 95113

Telephone: 408.535.8455
Fax: 408.292.6270
E-Mail: nina.grayson@sanjoseca.gov

In this capacity, the Director is responsible for implementing all aspects of the DBE Program and ensuring that the City complies with all provisions of 49 CFR Part 26.

The DBELO is responsible for developing, implementing and monitoring the DBE Program in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT;
- Works with appropriate organizations and City departments to set overall annual DBE goals;
- Ensures bid notices/advertisements are available to DBEs in a timely manner;
- Ensures DBE goals are included appropriately in bid notices/advertisements;
- Attends and participates in pre-bid meetings;
- Reviews all bids to determine DBE goal attainment and/or good faith efforts;
- Advises City Manager and Council on DBE matters and achievements;

FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE

The City has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The City shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and approved by DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved Program, the Department may impose sanctions

as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DIRECTORY

The directory identifying all firms eligible to participate as DBEs is available at www.dot.ca.gov or by contacting the California Department of Transportation/Unified Certification Program at 1-916-324-0780.

REQUIRED CONTRACT CLAUSES

Contract Assurance

The City will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the City deems appropriate.

Prompt Payment

The City will ensure that the following clause is placed in every DOT-assisted contract:

As a condition of the contract, the prime contractor agrees to pay each subcontractor under the prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City.

MONITORING AND ENFORCEMENT MECHANISMS

The DBE Liaison Officer shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments and other appropriate monitoring, as further described in the INFORMATION COLLECTION AND REPORTING section. The DBE Liaison Officer shall ensure that DBE participation is counted toward contract goals and the overall annual goal in accordance with the Regulations.

The Department of Transportation will be notified of any false, fraudulent or dishonest conduct in connection with the program, so that the DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. The City may also consider taking action such as responsibility determinations and legal action if appropriate.

CONTRACT GOALS

The City will establish contract goals only on those DOT-assisted contracts that have subcontracting opportunities. The City does not need to establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract. The City will express its contract goals as a percentage of the federal share of a DOT-assisted contract.

The Office of Equality Assurance has not established a Disadvantaged Business Enterprise (DBE) goal for the Norman Y. Mineta San Jose International Airport North Concourse General Building (Package 4) Project.

GOOD FAITH EFFORTS

Information to be submitted

On each solicitation for which a contract goal has been established, the City treats bidders' compliance with good faith efforts requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders to submit the following information at the time of bid opening in their bid proposals:

(1) The names and addresses of DBE firms that will participate in the contract;
(2) A description of the work that each DBE will perform; and
(3) The dollar amount of the participation of each DBE firm participation.
The List of Subcontractors, Suppliers and Truckers Documentation of Participation Form is included.

Upon written request by the DBE Liaison Officer:

(1) Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
(2) Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
(3) If the contract goal is not met, evidence of good faith efforts.

Sample Documentation of Commitment and Confirmation of Commitment is included.

Demonstration of Good Faith Efforts

On each solicitation for which a contract goal has been established, the obligation of the bidder is to make good faith efforts. On each solicitation for which a contract goal has been established, the bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 and are as follows. This list is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive.

- Soliciting through all reasonable and available means; e.g., attendance at pre-bid meetings, advertising and/or written notices, the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contact work items into economically feasible units to facilitate DBE participation even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A bidder using good business judgement would consider a number of factors in negotiating with subcontractors including DBE subcontractors and would take a firm'' price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal as long as such costs are reasonable. Also, the ability or desire of a prime contractor to

perform the work of a contact with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority/women contractors' groups: local; state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

The DBE Liaison Officer is responsible for determining whether a bidder, who has not met the contract goal, has documented sufficient good faith efforts to be regarded as responsible.

On each solicitation for which a contract goal has been established, the City will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before the City commits to the performance of the contract by the bidder.

Administrative Reconsideration

On each solicitation for which a contract goal has been established, within three days of being informed by the DBE Liaison Officer that it is not responsible because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. The bidder should make this request in writing to the following reconsideration official: Leslie R. White, Interim City Manager, 200 East Santa Clara Street, 17th Floor, San Jose, CA 95113, 408.535-8111, les.white@sanjoseca.gov. The Reconsideration Official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Reconsideration Official will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts When a DBE is Replaced on a Contract

On each solicitation for which a contract goal has been established, the contractor is required to have a valid agreement with the DBEs' designated to fulfill the contract goal. On any such project, the contractor will be allowed to substitute the originally designated DBEs only if it is demonstrated to the Project Manager that the DBE is unwilling or unable to perform. On any such project, the contractor's ability to negotiate a more advantageous contract with another subcontractor will not be considered a valid basis for substitution.

On each solicitation for which a contract goal has been established, if a DBE is unwilling or unable to perform, the contractor shall inform the Project Manager in writing and include documentation to justify the substitution, including a statement from the DBE to be replaced acknowledging substitution. On any such project, the contractor will identify a replacement DBE or document Good Faith Efforts to replace the DBE with another DBE to the extent needed to meet the contract goal.

On each solicitation for which a contract goal has been established, failure to comply with these requirements may result in sanctions against the contractor.

COUNTING DBE PARTICIPATION

The City will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

DBE Participation

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

To receive credit for its participation, a DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

A DBE may participate as a subcontractor, joint venture with a prime or subcontractor, or vendor of material or supplies.

Joint ventures are eligible for DBE participation if the:

1) DBE partner of the joint venture meets the DBE certification standards;
2) DBE partner is responsible for a clearly defined portion of the work to be performed; and if

3) DBE partner shares in the ownership, control and management responsibilities as well as the risks and profits of the joint venture in direct proportion to their ownership in the venture.

DBE Credit

Credit for materials or supplies obtained from a DBE manufacturer is 100 percent of the cost of the materials or supplies.

Credit for DBE vendors of materials or supplies is limited to 60 percent of the amount to be paid to the vendor for the materials or supplies.

Credit for trucking by DBEs is as follows:

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.

The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to receive credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee since these services are not provided by a DBE.

The lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE so long as the lease gives the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

A DBE must be a Unified Certification Program (UCP) certified DBE on the date bids for the project are opened before credit may be allowed toward the DBE goal.

The Unified Certification Program maintains a directory identifying DBEs that have been certified.

DBE CERTIFICATION

Unified Certification Program

As mandated by the United States Department of Transportation, a statewide Unified Certification Program (UCP) has been implemented in California. The UCP is a "one-stop-shopping" certification procedure that eliminates the need for businesses to obtain DBE certifications from multiple agencies within the State.

The UCP of California is charged with the responsibility of certifying firms and compiling and maintaining the Database of Certified DBEs for U.S. DOT grantees in California pursuant to 49 CFR Part 26. The Database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all grantees of California.

Process

For information about the UCP certification process or to apply for certification, firms should contact:

California Department of Transportation
Civil Rights – MS 79
1823 14th Street
Sacramento, CA 95814
Phone: 916-324-0780
Fax: 916-324-1862

Website: www.dot.ca.gov

The California UCP has established four Regional DBE Certification Clusters throughout the State to effectively facilitate statewide DBE certification activities. Completed certification packets are to be mailed to one of the agencies serving the county where the firm has its principal place of business.

The California UCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state.

Certification Appeals

Any firm or complainant may appeal the UCP's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

INFORMATION COLLECTION AND REPORTING

Bidders List

The Office of Equality Assurance will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age and annual gross receipts of firms.

The City's Office of Equality Assurance will take the following steps to obtain the required information:

1. Letters shall be sent to all bidders, on a DOT-assisted contract, requesting the names and addresses of all firms that bid or quoted as subcontractors.

2. Letters shall be sent to the firms that bid or quoted as subcontractors requesting the firm's status as a DBE or non-DBE, the age of the firm and the annual gross receipts of the firm.

3. Once information is received, it will be kept in a database for each DOT-assisted contract.

Monitoring Payments to DBEs

The Office of Equality Assurance will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The Office of Equality Assurance will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The Office of Equality Assurance will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals the dollar amounts stated in the Schedule of DBE Participation.

Reporting to DOT

The Office of Equality Assurance will report DBE participation to DOT as follows:

Annual DOT Form 4630, as modified for use by FAA recipients;
Quarterly DOT Form 4630 to FHWA

Contract Remedies

The Office of Equality Assurance will monitor compliance of its contractors on federally-assisted contracts with the requirements of the Regulations and the DBE Program. The Office of Equality Assurance may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages and termination of the contract in whole or in part.

Confidentiality

The City will safeguard from disclosure to third parties information that may reasonable be regarded as confidential business information, consistent with federal, state and local law. Notwithstanding any contrary provisions of state of local law, the City will not release personal financial information submitted in response to the personal net worth requirement to a third part (other than DOT) without the written consent of the submitter.

RD:KWF
2/22/2006

EXHIBIT N

DAVIS-BACON WAGE RATES

RD:KWF
2/22/2006

EXHIBIT O

CONTRACT PROVISIONS FOR LABOR MANAGEMENT

PREVAILING WAGES

Attention is called to the fact that State of California Prevailing Wage Rate requirements apply to this project. Copies of the General Prevailing Wage Determinations made by the California Director of Industrial Relations are available at the Office of Equality Assurance, 4 North 2nd Street, Suite 925, San Jose, CA 95113 and the Office of the City Clerk, 801 North First Street, Room 116, San Jose, CA 95110. The General Prevailing Wage Determinations is also available via the Internet at www.dir.ca.gov/DLSR/PWD. All questions regarding prevailing wage requirements are to be directed to the Office of Equality Assurance at 408-277-4025.

In the performance of this Agreement:

I. Standards of Responsibility: Prevailing Wages (Municipal Code 4.10.200)

The city requires in all of its procurement procedures that all persons who submit bids, proposals or offers to enter into a contract with the city to do so truthfully and in good faith, and shall not attempt to mislead the city with respect to the following including, but not limited to, records regarding the nature or quality of the work performed under the contract, payroll records, classification of employees on payroll records, and payment of prevailing wages where called for by the contract.

Please note the following classifications are not allowed on City of San Jose public works construction contracts:

Landscape Maintenance Laborer
Carpet, Linoleum:
Floor Preparation Worker Trainee, First 6 Months
Floor Preparation Worker Trainee, Second 6 Months
Floor Preparation Worker Trainee, Third 6 Months
Floor Preparation Worker Trainee, Fourth 6 Months
Floor Preparation Worker Trainee, Fifth 6 Months
Floor Preparation Worker Trainee, Sixth 6 Months
Floor Preparation Worker Trainee, Seventh 6 Months
Floor Preparation Worker Trainee, Eighth 6 Months
Floor Covering Handler Trainee, First 3 Months
Floor Covering Handler Trainee, Second 3 Months
Electrician:
Material Handler, First Six Months
Plumber:
Underground Utility Tradesman I

Landscape Tradesman I
Landscape Tradesman II
Refrigeration Tradesman (Year 2)
Refrigeration Tradesman (Year 3)
Refrigeration Tradesman (Year 4)
Refrigeration Tradesman (Year 5)

The following contractors have been debarred from bidding or performing work on any City projects:

Trimpak LLC for the period November 7, 2002 to November 7, 2005

The following contractors have agreed to not bid or perform work on any City projects:

Spectrum Painting and Decorating for the period August 21, 2002 to August 21, 2005

Wesco Infrastructure Technologies for the period September 9, 2003 to September 9, 2006

II. Remedies For Contractor's Breach Of Prevailing Wage/Living Wage Provisions

A. General: Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement ("Document Provision"). Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose. It increases the ability of such workers to attain sustenance, decreases the amount of poverty, and reduces the amount of taxpayer funded social services in San Jose.

4. It increases competition by promoting a more level a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment: Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Provision and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Prevailing Wage Provision.

In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Provision, is an express condition of the City's obligation to make each payment due the Contractor pursuant to this Contract. The City is not obligated to make payment due the contractor until contractor has performed all of its obligations under these provisions.

Any payment by the City, despite Contractor's failure to fully perform its obligations under these provisions, shall not be deemed to be a waiver of any other term or condition contained in this contract or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

C. Liquidated Damages For Breach Of Wage Provision: Contractor agrees its breach of the Wage Provision would cause the City damage by undermining the Goals, and the City's damage would not be remedied by contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

D. Audit Rights: All Records or documents required to be kept pursuant to this contract to verify compliance with the Wage Provision shall be made available at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to the City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or

documents shall be available at Contractor's address indicated for receipt of notices in this contract.

RD:KWF
2/22/2006

EXHIBIT P

REVISIONS TO 1992 STANDARD SPECIFICATIONS

A. Section 7-1.01A(4) of the Standard Specifications (page 7-5) shall be revised to read as follows:

7-1.01A(4) Labor Nondiscrimination. – Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

B. Section 7-1.04 Permits and Licenses of the Standard Specifications (page 7-14) shall have the following paragraph added:

"DESIGN BUILDER shall defend, indemnify, and hold harmless the City, its employees, and its agents from all legal claims, losses, actions in law or equity civil and/or criminal, arising from any and all acts, omissions, or negligence of DESIGN BUILDER in violation of any permit or license issued."

C. Section 7-1.22 Provisions of Law and Venue of the Standard Specifications (page 7-30) shall have the following paragraph added:

"All depositions, document production, mediations, arbitrations, and any other meetings will take place in the City of San Jose."

D. Section 8-1.06B of the Standard Specifications (page 8-4) shall be added as follows:

8-1.06B Annual Holiday Closure. – At the option of the Engineer, the contractor may be required to suspend all work and activities during the City's annual Holiday Closure in late December and early January of each year. No work shall be done during this suspension except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Engineer.

This suspension of work will be at no cost to the City. Working days will not be assessed during this suspension of work.

E. Section 9-1.03A – Work Performed by CONTRACTOR, Page 9-5, Second Paragraph: Revise to read as follows:

> "To the total of the direct costs computed as provided in Section 9-1.03A(1), "Labor," 9-1.03A(2), "Materials," and 9-1.03A(3), "Equipment Rental," there will be added a markup of 15 percent to the cost of labor, 15 percent to the cost of materials, and 15 percent to the equipment rental."

F. Section 9-1.03A – Work Performed by CONTRACTOR, Page 9-5, Fourth Paragraph: Add as follows:

> The additional 5% markup will be added once only, regardless of whether the work is performed by the subcontractor or further subcontracted.

Section 9-1.07C of the Standard Specifications (page 9-18) shall be added as follows:

> 9-1.07C Claims Certification. – All claims submitted by the contractor shall include the following personal certification:
>
> "I, _____, BEING THE (MUST BE AN OFFICER) OF _____ (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES."

RD:KWF
2/22/2006

EXHIBIT Q

NONDISCRIMINATION / NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS

Statement of Purposes

It is the Policy of the City of San Jose that no discrimination or preferences shall be permitted in the subcontracting of the City of San Jose construction contracts. Studies have demonstrated that there has been a pattern of discrimination against certain minority groups and women by contractors in the subcontracting of public works contracts. All contractors shall fully comply with Chapter 4.08 of the San Jose Municipal Code and shall not discriminate against or grant preferential treatment to any subcontractor on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the performance of the City of San Jose contracts. Any contractor who so discriminates or gives preferences shall be deemed not to be a responsible bidder in accordance with City of San Jose Charter Section 1217.

SECTION I -- REQUIREMENT

These provisions, entitled, "NONDISCRIMINATION / NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS are incorporated in and made part of the Special Provisions.

1. ALL BIDDERS ARE REQUIRED TO SIGN THE FOLLOWING STATEMENT, AS PART OF THEIR BID PROPOSAL:

> In listing subcontractors in this bid, I have not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. I understand that any such discrimination or preference is in violation of Chapter 4.08 of the Municipal Code.

SECTION II -- CONFLICT WITH APPLICABLE FEDERAL OR STATE LAW

In the event that a particular City public works contract is funded or required to be approved in whole or in part by the State or Federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, to the extent that any such provision is inconsistent, it shall not apply to the contract. To the

extent a Federal project requires an MBE/WBE Program, the Program set forth in Resolution #67001 shall be applicable.

SECTION III -- VIOLATION OF SECTION

Be aware that any Prime Contractor who discriminates or gives preferences is in violation of Chapter 4.08 of the San Jose Municipal Code. Any such violation, in addition to all other remedies set forth in the Municipal Code, is further subject to the provisions of the San Jose Municipal Code, Chapter 4.10 of Title 4, Debarment of Contractors From City Contracts

RD:KWF
2/22/2006

EXHIBIT R

CONTRACT PROVISIONS IMPLEMENTING CHAPTER 4.08 OF THE SAN JOSE MUNICIPAL CODE

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

DESIGN BUILDER shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the City, DESIGN BUILDER shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether DESIGN BUILDER or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

3. Failure to Comply With Nondiscrimination Provisions.

If the Compliance Officer determines that the DESIGN BUILDER has not complied with the nondiscrimination or nonpreference provisions of this Agreement, the City may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject DESIGN BUILDER and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

4. Subcontracts.

DESIGN BUILDER shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Compliance Officer, if the Compliance Officer determines that the DESIGN BUILDER has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the DESIGN BUILDER or other governmental agency are substantially the same as those imposed by the City.