

CITY OF LAKEPORT
ENGINEERING DIVISION
LAKEPORT, CALIFORNIA

**NOTICE TO BIDDERS
AND
SPECIAL PROVISIONS
FOR
LAKESHORE BOULEVARD
ER PROJECT
FROM SAYRE ST TO JONES ST
FEDERAL AID PROJECT NO. ER-4403(003)
IN
LAKEPORT, CALIFORNIA**

BID NO. 16-03

July 2016

BID OPENING: 2:00 PM, Wednesday, August 24, 2016

SET NO.: _____

CITY OF LAKEPORT
ENGINEERING DIVISION
LAKEPORT, CALIFORNIA

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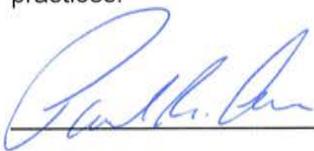
Bid Book dated July 2016

Caltrans Standard Specifications dated 2010

Project plans dated May 2016

Caltrans Standard Plans dated 2010

I certify that this project was designed by
me or under my direction in accordance
with generally accepted engineering
practices.



7/20/16

Paul R. Curren, R.C.E. #C34527
Expires 09/30/17

Date

SPECIAL NOTICES

- See sections 2, 3, and 7 for contractors' registration and Department of Industrial Relations' monitoring and enforcement requirements.
- DBE requirements have been revised. See sections 2, 3, and 5 in the RSS and DBE forms in the *Bid* book for the revised requirements.
- The project shall use the published HMA specifications contained in the referenced Caltrans Standard Specifications **without** any revision except as provided herein.

CITY OF LAKEPORT, STATE OF CALIFORNIA
 LAKESHORE BOULEVARD ER PROJECT
 BID NO. 16-03

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CITY OF LAKEPORT
ENGINEERING DIVISION
NOTICE TO BIDDERS

PUBLIC NOTICE IS HEREBY GIVEN that the City of Lakeport as AGENCY, invites sealed bids for the above stated project and will receive such bids in the office of the City Clerk, 225 Park Street, Lakeport, CA 95453 up to the hour of 2:00 PM on the 24th day of August, 2016. The bids will be publicly opened and read at 2:00 PM on the 24th day of August, 2016, in the Lakeport City Hall Front Conference Room.

General work description: Emergency repair consisting of embankment reconstruction and rock slope protection to protect the site from future storm damage. You must perform, place, construct, or install other items and details not mentioned that are required of the plans under the Standard Specifications and special provisions.

The City will receive sealed bids for **LAKESHORE BOULEVARD ER PROJET**, Bid Number: 16-03

Copies of the documents may be viewed for information only at the City of Lakeport website at <http://www.cityoflakeport.com/departments/docs.aspx?deptID=38&catID=51> Improvement Bid Documents and Bid Results/Lakeshore ER Project. To submit a bid, you must request plans, specifications and bid forms as indicated herein. Only bids submitted on the official printed documents will be accepted.

You may request plans, specifications and bid forms for this project from the City of Lakeport, Engineering Division, City Hall, 225 Park Street, Lakeport, California 95453, Telephone (707) 263-3056 ext.20. A nonrefundable fee of \$60 is required for the Contract Documents.

In accordance with the provisions of California Public Contract Code § 3300, and Business and Professions Code § 7028.15(e), the Agency has determined that the contractor shall possess a valid Class A contractor's license at the time that the contract is awarded. Failure to possess the specified license shall render a bidder's bid as non-responsive and shall bar award of the contract to any bidder not possessing the specified license at the time of the award.

Bid forms for this work are included in a separate book titled:

CITY OF LAKEPORT
ENGINEERING DIVISION
LAKEPORT, CALIFORNIA
BID
FOR
LAKESHORE BOULEVARD
ER PROJECT
FROM SAYRE ST TO JONES ST
IN
LAKEPORT, CALIFORNIA
FEDERAL PROJECT NO: ER-4403(003)
BID NO. 16-03

The DBE Contract goal is (5%) five percent.

Federal-aid project no.: **ER-4403(003)**

For the federal training program, the number of trainees or apprentices is 0.

Bids must be on a unit price basis.

Complete work within 30 working days.

The estimated cost of construction is \$460,000

A pre-bid meeting is scheduled for 11:00 AM on Wednesday, July 27, 2016, at the City of Lakeport, Engineering Division, City Hall, 225 Park Street, Lakeport, California 95453. Upon completion of the meeting at City Hall an optional field review will also occur. The pre-bid conference is not mandatory.

Bids must be prepared on the approved bid forms in conformance with INSTRUCTIONS TO BIDDERS and submitted in the envelopes provided, sealed and plainly marked on the outside:

"SEALED BID FOR LAKESHORE BOULEVARD ER PROJECT
BID NO. 16-03
DO NOT OPEN WITH REGULAR MAIL"

The City will receive sealed bids until 2:00 p.m. on the bid open date at the Engineering Division of the City of Lakeport at 225 Park Street, Lakeport, California 95453. Bids received after this time will not be accepted. The City will open and publicly read the bids in the Front Conference Room" at the mentioned location after the specified closing time.

Present bidders' inquires in writing to the Office of the Engineering Division, City of Lakeport, 225 Park Street, Lakeport, California, 95453, fax (707) 263-9413. If you have any questions, please contact Paul Curren at 707-263-5613 ext. 28 or Kevin Ingram at 707-263-5613 ext.11.

Questions about alleged patent ambiguity of the plans, specifications, or estimate must be submitted in writing prior to 5 PM on August 15, 2016. After this time, the City will not consider these questions as bid questions.

The bid must be accompanied by a bid guarantee in the amount of 10% of the total bid by 2:00 p.m. ON THE DATE ADVERTISED FOR THE OPENING OF BIDS. More specifically, pursuant to Public Contract Code §§ 20170 and 20171, all bids for the project shall be presented, under sealed cover and shall be accompanied by one of the following forms of bidder's security in the amount of ten percent (10%) of the bid: (a) cash; (b) a cashier's check made payable to the City of Lakeport; (c) a certified check made payable to the City of Lakeport; or (d) a bidder's bond executed by an admitted surety insurer made payable to the City of Lakeport. Such security shall be forfeited should the successful bidder to whom the contract is awarded fails to timely execute the contract and to deliver the necessary bonds and insurance certificates as specified in the contract documents.

You must take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the Contract (49 CFR 26).

CONTRACTORS AND SUBCONTRACTORS ARE ALSO REQUIRED TO BE REGISTERED WITH THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS FOR ANY BID PROPOSAL SUBMITTED ON OR AFTER MARCH 1, 2015, AND FOR ANY CONTRACT FOR PUBLIC WORK ENTERED INTO ON OR AFTER APRIL 1, 2015. A contractor or subcontractor shall not be qualified to bid on, be listed on a bid proposal for, or perform any public work contract unless it is currently registered with the California Department of Industrial Relations as described in Labor Code § 1725.5.

To the extent applicable, at any time during the term of the Agreement for the proposed project, the successful bidder may, at its own expense, substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300.

Prevailing wages are required on this Contract. The Director of the California Department of Industrial Relations determines the general prevailing wage rates. Obtain the wage rates at the DIR Web site, <http://www.dir.ca.gov/DLSR/PWD>, or from the City's Engineering Division.

The federal minimum wage rates for this Contract as determined by the United States Secretary of Labor are included in the Bid Book and are available at <http://www.wdol.gov/dba.aspx>.

If the minimum wage rates as determined by the United States Secretary of Labor differs from the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, you and your subcontractors must not pay less than the higher wage rate. The City does not accept lower State wage rates not specifically included in the federal wage determinations. This includes helper, or other classifications based on hours of experience, or any other classification not appearing in the federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by you and your subcontractors, you and your subcontractors must pay not less than the Federal minimum wage rate that most closely approximates the duties of the employees in question.

Prior to the issuance of the Notice to Proceed, you will attend a pre-construction conference held at the office of the Engineering Division for the purpose of discussing the scope of work, Contract drawings, specifications, existing conditions, material to be ordered, equipment to be used, and all essential matters pertaining to the prosecution and the satisfactory completion of the project. You MUST include all major superintendents for the work and major sub-contractors at this conference. You must appoint a superintendent to act as the single point of contact for the duration of the project. In the event a substitution should be made during the project, you will provide this information in writing.

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

California Department of Transportation has made available Notices of Suspension and Proposed Debarment from the Federal Highway Administration. For a copy of the notices, go to http://www.dot.ca.gov/hq/esd/oe/contractor_info. Additional information is provided in the Excluded Parties List System at <http://www.epls.gov>.

PRELIMINARY QUANTITIES
(NOT TO BE USED FOR BIDDING PURPOSES)

**LAKESHORE BOULEVARD
ER PROJECT**

| BASE BID | | | |
|---|---|-----------------|----------|
| BID ITEMS AND ESTIMATED QUANTITIES | | | |
| ITEM NO. | DESCRIPTION | UNIT OF MEASURE | QUANTITY |
| 1 | Mobilization | Lump Sum | LS |
| 2 | Construction Site Management | Lump Sum | LS |
| 3 | Prepare Water Pollution Control Plan | Lump Sum | LS |
| 4 | Water Pollution Control | Lump Sum | LS |
| 5 | Erosion Control | Lump Sum | LS |
| 6 | Construction Staking | Lump Sum | LS |
| 7 | Construction Area Signs | Lump Sum | LS |
| 8 | Traffic Control System | Lump Sum | LS |
| 9 | Contractor-Supplied Biologist | Lump Sum | LS |
| 10(F) | Excavation & Removal | 1,065 | CY |
| 11(F) | 8 Inch Geocell | 15,900 | SF |
| 12(F) | 3/4 Inch Class 2 Aggregate Base | 842 | TON |
| 13(F) | Rock Slope Protection (No. 2, Method B) | 500 | TON |
| 14(F) | Rock Slope Protection (1/2 T Method A) | 809 | TON |
| 15 | Concrete Curb | 41 | LF |
| 16 | Concrete Curb & Gutter | 58 | LF |
| 17 | Under Sidewalk Drain | 3 | EA |
| 18 | 6 Inch Hot Mix Asphalt Digout | 388 | SF |
| 19(F) | Willow Shoot Planting | 690 | EA |
| ADDITIVE ALTERNATE BID | | | |
| 20(F) | Rock Slope Protection (2T, Method A) | 150 | TON |
| 21 | Hot Mix Asphalt (Type A) | 30 | TON |
| | (F) - Denotes Final Pay Item | | |

The contract shall be awarded based on the base bid.

ENGINEERING DIVISION

Date: _____

By: _____

Paul R. Curren, PE
City Engineer

Redefine the following definitions in section 1-1.07B to mean:

Dispose of: Remove from job site. Receiving site must be pre-approved by the Engineer before hauling away.

State: City of Lakeport

Department/Department of Transportation: City of Lakeport

Director: City Council, City of Lakeport

Engineer: City Engineer, City of Lakeport acting either directly or through properly authorized agent or consultants.

Replace "The Department" in the 1st paragraph in section 1-1.08 with:

Caltrans

Replace section 1-1.12 with:

Make checks and bonds payable to the City of Lakeport.

2 BIDDING

Add section 2-1.04 CONTRACTOR REGISTRATION

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

Replace section 2-1.06A with:

2-1.06A General

Locations for obtaining Contract documents are listed in the Notice to Bidders.

The City will receive sealed bids until 2:00 p.m. on the bid open date at the Engineering Division, City of Lakeport at 225 Park Street, Lakeport, California 95453. Bids received after this time will not be accepted.

The City will open and publicly read the bids in a Conference Room at the above location after the specified bid opening time.

The *Notice to Bidders and Special Provisions* includes the *Notice to Bidders*, revised standard specifications, and special provisions.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the City or any other person will not affect the risks or obligations assumed by you or relieve you from fulfilling any of the conditions of the Contract.

A Non-Collusion Affidavit is included in the bid book (Pub Cont Code § 7106). Signing the bid also constitutes signature of the Non-Collusion Affidavit.

Replace section 2-1.06B with:

There is no supplemental project information available.

Check with local contractors regarding local site, surface, subsurface and material conditions and variability. Failure to do so will not relieve your obligation to enter into a contract and complete the contemplated work under the Contract Documents.

Examine all of the various parts of these Documents if contemplating the submission of a bid, and should there be any doubt as to the meaning or intent of the Contract Documents, you must request an interpretation, in writing, at least six working days before BID opening. Any interpretation or change in the Contract Documents will be made, in the form of addenda to the Documents and will be furnished to all Bidders receiving a set of the Documents. The City is not responsible for any other explanation or interpretations of the Documents.

Request for interpretation must be submitted in writing to:

**Mr. Paul Curren
Engineering Division
225 Park Street
Lakeport, California 95453-4790
Fax No. (707) 263-9413**

Replace section 2-1.12 with:

2-1.12 DISADVANTAGED BUSINESS ENTERPRISES

2-1.12A General

Section 2-1.12 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, sub recipient 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, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

Include this assurance in each subcontract you sign with a subcontractor.

2-1.12B Disadvantaged Business Enterprise Goal

2-1.12B(1) General

Section 2-1.12B applies if a DBE goal is shown on the *Notice to Bidders*.

The Department shows a goal for DBEs to comply with the DBE program objectives provided in 49 CFR 26.1.

Make work available to DBEs and select work parts consistent with available DBEs, including subcontractors, suppliers, service providers, and truckers.

Meet the DBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the Contract.

Determine that selected DBEs perform a commercially useful function for the type of work the DBE will perform on the Contract as provided in 49 CFR 26.55(c)(1)–(4). Under 49 CFR 26.55(c)(1)–(4), the DBE must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.

All DBE participation will count toward the Department's federally-mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs will be evaluated on a contract-by-contract basis and counts toward the goal in the following manner:

1. 100 percent if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit toward the goal if you employ a DBE trucking company that is performing a commercially useful function. The Department uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- 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 DBE goals.
- 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 lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of 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 truck. Leased trucks must display the name and identification number of the DBE.

[49 Fed Reg 59595 (10/2/14) (to be codified at 49 CFR 26.55(d))]

04-10-15

2-1.12B(2) DBE Commitment Submittal

Submit DBE information under section 2-1.33.

Submit a copy of the quote from each DBE shown on the DBE Commitment form that describes the type and dollar amount of work shown on the form. Submit a DBE Confirmation form for each DBE shown on the DBE Commitment form to establish that it will be participating in the Contract in the type and dollar amount of work shown on the form. If a DBE is participating as a joint venture partner, submit a copy of the joint venture agreement.

01-23-15

2-1.12B(3) DBE Good Faith Efforts Submittal

You can meet the DBE requirements by either documenting commitments to DBEs to meet the Contract goal or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal.

If you have not met the DBE goal, complete and submit the DBE Good Faith Efforts Documentation form under section 2-1.33 showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by DBEs are considered.

Submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the DBE goal has not been met.

Refer to 49 CFR 26 app A for guidance regarding evaluation of good faith efforts to meet the DBE goal.

The Department considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal.

Replace section 2-1.33A with:

Complete the forms in the *Bid Book*. Submit the forms with your bid.

Do not fax forms except for the copies of forms with the public works contractor registration number submitted after the time of bid. Fax these copies to (707)263-9413.

Failure to submit the forms and information as specified may result in a nonresponsive bid.

All blank spaces in the Bid form must be filled in, in ink, in both words and figures, where required. No changes will be made in the phraseology of the forms. Written amounts will govern in cases of discrepancy between the amounts stated in writing and the amounts stated in figures. In case of discrepancy between unit prices and totals, unit prices will prevail. Indicate receipt of all addenda.

Any Bid will be deemed nonresponsive if it contains any of the following:

1. omissions, erasures, alterations, or additions of any kind
2. prices uncalled for
3. prices that are obviously unbalanced
4. fails to conform to the conditions of the published Advertisement for Bid in any manner.

Sign your bid in ink in the space provided.

If you are:

1. corporation, the legal name of the corporation must be stated, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation
2. co-partnership, the true name of the firm must be stated, together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership

If an agent other than the authorized corporate officer or a partnership member signs the bid, file a Power of Attorney with the City either before opening bids or with the bid. Otherwise, the bid may be nonresponsive.

State and local sales and use taxes required by State statutes and laws will be paid by you. Prices quoted in the Bid must include sales tax.

Replace section 2-1.33C with:

On the Subcontractor List form, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number
4. Portion of work it will perform. Show the portion of the work by:
 - 4.1. Bid item numbers for the subcontracted work
 - 4.2. Percentage of the subcontracted work for each bid item listed
 - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent

Replace section 2-1.34 of the RSS with:

Each BID must be accompanied by a BID bond payable to the City for ten percent (10%) of the total amount of the BID. Once BID prices have been compared, the City will return the BID bonds of all except the three lowest responsible BIDDERS. When the Agreement is executed, the BID bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until

The estimated quantities listed in the Bid are approximate and for the basis of award of Contract. Payment will be made on the measurement of the work actually performed by you. The City reserves the right to increase or decrease the amount of any class of work as may be deemed necessary and as stated in Section 9-1.06.

When the Bid for the work is to be submitted on a lump sum basis, a single lump sum price must be submitted in the appropriate place. The total amount to be paid you must be the amount of the lump sum in the Bid, as adjusted for additions or deletions resulting from changes in construction. After award of Contract, you will break down and submit the lump sum Bid into unit prices for the various portions to be completed.

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

Add section 3-1.03 BID PROTEST:

Any party with a direct financial interest adversely affected by any alleged bid irregularity at the bid opening may file a PROTEST with the CITY based on alleged violations of Federal, State, or local law or ordinance, or alleged bid irregularity.

A protest must:

1. be written,
2. state the specific basis of the appeal,
3. request a determination of the protest issue,
4. be filed no later than 72 hours before the scheduled AWARD OF CONTRACT by CITY, as determined by the published agenda of the City Council of the City of Lakeport. Any protest filed after this time will not be considered.

The party filing the protest must transmit a copy of all protest documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest appeal concurrently.

The CITY will review the protest and make a determination.

The NOTICE TO PROCEED will be issued within fifteen (15) days of the execution of the Agreement by the CITY. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period; the time may be extended by mutual agreement between the CITY and YOU. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, YOU may terminate the Agreement without further liability on the part of either party.

If the City awards the contract, the award is made to the lowest responsible bidder within 60 days. This period may be subject to extension for such further period as agreed upon in writing between the City and you.

Replace section 3-1.05 with:

The successful bidder must furnish 3 bonds with a corporate surety approved by the City:

1. Payment bond to secure the claim payments of laborers, workers, mechanics, or materialmen providing goods, labor, or services under the Contract. This bond must be equal to at least 100 percent of the total bid.
2. Performance bond to guarantee the faithful performance of the Contract. This bond must be equal to at least 100 percent of the total bid.
3. Maintenance bond to guarantee the faithful maintenance of the Contract.

The bond forms are in the *Bid Book*.

7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

Add after the 1st sentence of the 1st paragraph of section 7-1.02A:

This requirement includes, but is not limited to, applicable regulations concerning employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.

Replace the 2nd paragraph of section 7-1.02K(2) with:

The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are available at the City of Lakeport address. These wage rates are not included in the Contract Documents. Changes in general prevailing wage determinations apply to the Contract when the Director of Industrial Relations has issued them at least 10 days before advertisement.(Labor Code § 1773.6 and 8 CA Code of Regs 16204).

Add to section 7-1.02K(2):

All labor will be paid at not less than the minimum wage rates established by the State of California's Director of Industrial Relations (State Wage Rates). The minimum Federal Wage Rates applicable to this project are in the book issued for bidding purposes entitled "Bid".

Replace the 5th paragraph of section 7-1.02K(3):

Submit certified payroll and your signed contractor's acknowledgement to the Engineer.

Delete all paragraphs and references to electronic submission of certified payrolls in section 7-1.02K(3).

Add to section 7-1.03:

You are responsible for contacting local newspapers, radio stations and other appropriate media in sufficient time to provide the public with at least 15 days' notice of restricted access in the project area. This notice must specify the dates of restricted access and/or closures. Prior to issuing any public announcement, you will submit proposed announcement for approval.

Replace the 1st sentence of paragraph 26 of section 7-1.04:

Do not reduce an open traffic lane width to less than 10 feet, unless shown.

Add to section 7-1.04:

When work is not in progress on a trench or other excavation that required closure of an adjacent lane, the traffic cones or portable delineators used for the lane closure must be placed off of and adjacent to the edge of the traveled way. The spacing of the cones or delineators must be not more than the spacing used for the lane closure.

Suspended loads or equipment must not be moved nor positioned over public traffic or pedestrians.

Replace the 1st paragraph of section 7-1.05A with:

You must indemnify and hold harmless the City, its agents, officers, and employees, against and from any and all claims, lawsuits, actions, liability, damages, losses, expenses, costs, and actual attorneys' fees, arising out of or in connection with your performance of this Contract for:

For purposes of your obligation to defend, indemnify, and save harmless, the term State will have the following meaning:

The City of Lakeport

including their officers, directors, employees, agents, and design professionals.

Your obligations under section 7 will survive the termination of the Agreement.

Replace sections 7-1.06B through 7-1.06I with:

Obtain insurance and submit all certificates of insurance to the City for acceptance before starting work. The certificates of insurance must contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to City, or ten (10) days' notice if cancellation is due to nonpayment of premium.

Do not allow any subcontractor to commence work until the insurance required of the subcontractor has been obtained.

Any violation of the requirements of section 7 constitutes a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance must be filed with the CITY within ten (10) days after the date of execution of this Agreement by you and before the start of work:

(A) Workers' Compensation Insurance and Employer's Liability Insurance

You and your subcontractors must obtain and maintain for all employees engaged in the work. Provide Employer's Liability Insurance in amounts not less than One Million Dollars (\$1,000,000) per occurrence.

(B) Commercial General Liability (Form CG 20 10 11 85).

You must obtain and maintain for yourself and all your employees during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury and property damage in an amount of not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence and if the policy includes an aggregate limit, the aggregate limit must be at least Two Million dollars (\$2,000,000) for the following coverage:

1. Personal injury
2. Broad form property damage
3. Explosion, Collapse, and underground hazards
4. Premises, operations, and mobile equipment
5. Products and completed operations
6. Blanket contractual liability

(C) Automobile Liability Insurance

Carry Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned automobiles used in connection with your business in an amount not less than One Million dollars (\$1,000,000) combined single-limit coverage per occurrence.

Subcontractors

You must include all subcontractors as insured under the policies or furnish separate certificates and endorsements to the City for approval for each subcontractor. All insurance coverage for subcontractors is subject to each of the requirements in Section 7 and must contain the additional insured endorsements required of you described under Section 7.

(E) Additional Insured Endorsement

The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The City, its officers, officials, employees, designated agents, and appointed volunteers must be named as additional insured's and must be added in the form of an endorsement to your insurance on Form CG 20 10 11 85. You must not commence work under this Agreement until Form CG 20 10 11 85 is delivered to City. This provision is not intended to extend to construction contractors contracted by the City to perform the work of improvement.

Coverage must not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

(F) Other Insurance Provisions

For any claims related to the work performed under this Agreement, your insurance coverage must be primary insurance as to the City, its officers, officials, employees, designated agents and appointed volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated agents or appointed volunteers must be in excess of your insurance and must not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either you must reduce or eliminate such deductibles or self-insurance retentions as they apply to City or you must provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of you under this Agreement must be placed with insurers with a current A.M. Best rating of no less than A:VII.

Insurance coverage in the minimum amounts must not be construed to relieve you for liability in excess of such coverage, nor will it preclude the City from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of City to enforce in a timely manner any of the provisions of Section 7 will not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "occurrence" form, you agree to maintain required coverage for a period of three years after the expiration of this Agreement (Post Agreement Coverage) and any extensions. You must maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This sub provision is contingent upon the Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage must be deemed to be reasonable.

You agree to waive all rights of subrogation against City, its officers, officials, employees, agents, and volunteers for losses arising from work performed by you under this Agreement.

City will include a provision in its contract with the general contractor hired to perform the work of improvements requiring that the general contractor and all of its subcontractors maintain general liability insurance of not less than \$1,000,000 and that such insurance include the City, its officers, officials, employees, designated agents and appointed volunteers as additional insureds.

Replace the form in section 7-1.11B with:

07-20-12

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. 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 contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 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.d. 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, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. 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 be easily seen by the workers.

b.(1) 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:

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

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

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

(2) 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, DC 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.

(3) 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 Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

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

3. Payrolls and basic records

a. 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) 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:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

(iii) 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.

(3) 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.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, 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 FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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.

c. 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.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

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 Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 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 5.5.

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

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

a. 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).

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which 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.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, 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.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime 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.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. 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 clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. 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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

AA

8 PROSECUTION AND PROGRESS

Delete section 8-1.04

Replace section 8-1.04C with:

Start job site activities on the date stated in the Notice to Proceed. This work shall be diligently prosecuted to completion before the expiration of 30 WORKING DAYS beginning on the date specified in the Notice to Proceed.

Do not start job site activities until the Department authorizes or accepts your submittal for:

1. Contractor-supplied biologist
2. Biological resource information program
3. CPM baseline schedule
4. WPCP or SWPPP, whichever applies

If the submittals for Contractor-supplied biologist and biological resource information program are authorized, you may enter the job site only to measure controlling field dimensions and locate utilities.

Do not start other job site activities until all the submittals from the above list are authorized or accepted and the following information is received by the Engineer:

Add to section 8-1.10A:

The parties agree this liquidated damages provision represents reasonable compensation for the loss which would be incurred.

AA

9 PAYMENT

Add to section 9-1.03:

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

Delete section 9-1.07

DIVISION II GENERAL CONSTRUCTION
10 GENERAL

Replace the headings and paragraphs in section 10 with:

04-19-13

10-1 GENERAL

10-1.01 GENERAL

Section 10 includes general specifications for general construction work.

10-1.02 WORK SEQUENCING

Before obliterating any traffic stripes, pavement markings, and pavement markers to be replaced at the same location, reference the stripes, markings, and markers. Include limits and transitions with control points to reestablish the new stripes, markings, and markers.

You may work only from September 1 through January 31 of any year.

AA

12 TEMPORARY TRAFFIC CONTROL

As a minimum, the Contractor shall place K rail segments along the existing lane edge during non-working hours in any area that has been excavated and the ½ ton rip rap layer not placed. No K rail is required after completion of the rip rap layer and the finishing of the walkway including aggregate base, paving and 2 ton barrier rocks. The K rail shall extend a minimum of 20 feet beyond the excavation limits and be angled away from the roadway on both ends.

Delete “not” from section 12-3.02D

Replace the 2nd paragraph of section 12-4.01 with:

Do not perform work that would require a closure. *All work must be performed under road closure and detour as shown.*

Replace section 12-5 with:

12-5 TRAFFIC CONTROL SYSTEM FOR LANE CLOSURE

12-5.01 GENERAL

Section 12-5 includes specifications for closing traffic lanes with stationary lane closures on 2-lane, 2-way highways. The traffic control system for a lane closure must comply with the details shown.

Traffic control system includes signs and barricades. Barricades must comply with section 12-3.02.

12-5.02 MATERIALS

Not Used

12-5.03 CONSTRUCTION

Whenever components of the traffic control system are displaced or cease to operate or function as specified from any cause, immediately repair the components to the original condition or replace the components and restore the components to the original location.

14-6.02C(6) Monitoring Schedule

Not Used

14-6.02D Payment

Not Used

Replace section 14-6.05 with:

14-6.05 CONTRACTOR-SUPPLIED BIOLOGIST

14-6.05A General

14-6.05A(1) Summary

Section 14-6.05 includes specifications for providing a Contractor-supplied biologist to monitor construction and other activities to protect regulated species that may be harmed during construction activities.

14-6.05A(2) Submittals

14-6.05A(2)(a) Qualifications

Within 7 days after Contract approval, submit each biologist's name, resume, and statement of qualifications. Allow 15 days for review. If the submittal is incomplete, the Engineer will provide comments. Within 7 days after receiving the Engineer's comments, update and resubmit qualifications data. Do not start construction activities until the Contractor-supplied biologist is authorized.

14-6.05A(2)(b) Protocols

Not Used

14-6.05A(2)(c) Pre-Construction Survey Report

Submit a pre-construction survey report within 7 days before starting construction activities.

14-6.05A(2)(d) Initial Monitoring Report

Submit an Initial Monitoring Report that includes, at a minimum, the requirements for Monitoring Report submittals within 12 hours after starting ground-disturbing activities.

14-6.05A(2)(f) Incident Report

Submit an Incident Report within 24 hours of the incident.

14-6.05A(2)(g) Annual Monitoring Report

Not Used

14-6.05A(2)(h) Final Monitoring Report

Submit no later than 20 days after completion of the project.

14-6.05A(3) Quality Control and Assurance

14-6.05A(3)(a) Qualifications

A biologist must meet PLAC requirements. Provide required qualifications for transmittal to regulatory agencies. All project specific authorizations must be current and valid for the duration of the project.

14-6.05A(3)(b) Protocols

Not Used

14-6.05B Materials

Not Used

14-6.05C Construction

14-6.05C(1) General

Not Used

14-6.05C(2) Pre-construction Survey

Survey the work area for regulated species within 7 days before starting construction activities.

14-6.05C(3) Protective Radius

Not Used

14-6.05C(4) Monitoring Schedule

Monitoring must comply with the schedule in section 14-6.02.

14-6.05C(5) Monitoring Duties

The biologist must:

1. Monitor for regulated species within the project area.
2. Assure that construction activities do not result in take of regulated species.
3. Assure that construction activities comply with PLACs.
4. Immediately notify the Engineer of any take of regulated species.
5. Prepare, submit, and sign notifications and reports.

14-6.05C(6) Notification and Reporting

All reports must include the following:

1. PLAC requirement implementation
2. Name(s) of the biologist(s) conducting biological activity
3. Date(s) and time(s) of monitoring
4. Locations and activities monitored
5. Representative photographs
6. Findings
7. If regulated species are observed, reports must recommend actions to protect the regulated species
8. Name of the biologist who prepared the report
9. Signature of the biologist certifying the accuracy of the report

The Pre-Construction Survey Report includes one of the following:

1. Detailed observations and locations where regulated species were observed
2. Statement that no regulated species were observed by each biologist

The Incident Report includes:

1. Description of any take incident
2. Species name and number taken
3. Details of required notifications with contact information
4. Corrective actions proposed or taken
5. Disposition of taken species

The Final Monitoring Report must be a cumulative report following the format of the Annual Monitoring Report.

14-6.05D Payment

Not Used

Replace the 2nd paragraph of section 14-8.02A with:

Do not exceed 86 dBA LMax at 50 feet from the job site activities.

Do not operate construction equipment or run the equipment engines from 7:00 p.m. to 7:00 a.m. or on Sundays. Adjust back-up alarms to the lowest allowable level.

AA

DIVISION III GRADING

16 CLEARING AND GRUBBING

Replace the 4th paragraph in section 16-1.03A with:

Clear and grub vegetation only within the excavation and embankment slope lines.

AA

19 EARTHWORK

All of the existing slope protection materials shall be removed, even if beyond the limits of the toe of slope. Removal beyond the toe of slope shall be accomplished with an excavator equipped with a "thumb" to lift out the riprap material with minimal disturbance of the surrounding lakebed. Any indentations left from the removal outside the toe limits shall be backfilled with native material with the surface smoothed to the surface of the surrounding lakebed.

All of the existing slope protection materials shall be removed prior to excavation of native materials. This requirement does not preclude the contractor from completing the work in "stages" so minimize open slopes or excavations. No more than 100 foot of unsupported excavation shall be allowed at one time. Unsupported excavation shall be all locations where excavation has occurred but the geocell and No. 2 rock have not been placed to the surface.

The excavated material shall be disposed at the City storage yard off of Highway 175 at locations designated by the Engineer. The excavated material shall be segregated into piles of rock, concrete and sacked concrete into one pile and native soils into a separate pile. After the project excavation is complete, the piles shall be consolidated using a loader, dozer or excavator to the satisfaction of the Engineer.

The subgrade shall be excavated to the limits as indicated on the drawings. The subgrade shall be smoothed to facilitate the placement of the geocell. If a roller is used, it shall be less than 3 tons in weight. Any method which begins to deflect the subgrade soils shall be immediately discontinued and another method used. In no case shall remaining lumps or material greater than 1-1/2 inches remain prior to geocell placement.

After completion of the geocell and rip rap placement beneath the existing lake side grade, the void between the excavation rip rap shall be filled with similar materials to the adjacent lakebed. The finished surface shall slope toward the lakebed and be smoothed such that there are no lumps or ridges in the finished surface. The backfill soils shall not contain any rocks larger than 2 inches in dimension.

No more than 100 foot of unsupported excavation shall be allowed at one time. Unsupported excavation shall be considered the all locations where excavation has occurred but the geocell and No. 2 rock have not been placed to the surface.

Add to section 19-1.03A:

Double handling of earthwork materials may be required.

Add to section 19-1.04:

Double handling of earthwork materials is included in the payment for roadway excavation and removal. Excavation and Removal is a "final" pay item and the quantity will not vary unless the limits of work are changed by the Engineer.

AA

20 LANDSCAPE

Add to the 3th paragraph in section 20-3.03C(3)(d)(ii) of the RSS for section 20:
Plant willow cuttings between [October 1](#) and [April 30](#).

Delete the 4th paragraph in section 20-3.03C(3)(d)(ii) of the RSS for section 20.

Replace section 20-3.04 of the RSS for section 20 with:
20-3.04 VEGETATED ROCK SLOPE PROTECTION

20-3.04A GENERAL

Section 20-3.04 includes specifications for planting willow poles and branches in rock slope protection.

If willow planting cannot be installed within the specified time frame then the work [must be performed when directed by the Engineer](#).

Notify the Engineer 5 days before installing willow poles.

20-3.04B MATERIALS

20-3.04B(1) Willow Cuttings

It is anticipated that the Willow Cuttings will need to be purchased and brought out to the site.

During transportation, the willow cuttings shall be placed on the transport vehicles in an orderly fashion to prevent damage and to facilitate handling. Willow cuttings shall be wrapped in light-colored, opaque plastic with small amounts of water added to prevent desiccation. Willow cuttings shall be kept out of direct sunlight or in other locations that are likely to heat up.

Planting holes must be made perpendicular to the ground line and shall be formed with a water jet stinger or auger on a [6.5 feet grid](#). Plant holes must be large enough to receive the willow cuttings in order that the willow cuttings may be planted to the proper depths without damage to the bark. Where rock or other hard material prohibits holes from being excavated as specified, new holes must be excavated and the abandoned holes backfilled.

If the soil in and around the plant hole is not wet before planting, the soil must be watered and maintained in a wet state until the willow cuttings are planted.

Willow cuttings must be re-cut using a grafting or cutting knife at an angle before inserting in the soil. The base of willow cuttings must be planted approximately two-thirds of the willow cutting's length and must have from 3 to 5 bud scars exposed above the plant hole. Willow cuttings with more than 5 bud scars exposed must have excess scars removed by pruning. After planting, the plant holes must be backfilled with water and excavated material to make a mud slurry. Distribute the excavated material within the hole without clods, lumps or air pockets and compacted without damage to the willow cutting's bark. Compaction shall be sufficient to adequately to prevent the willow cutting from being easily removed from the soil.

Place commercial fertilizer packet in the backfill of each plant to within 6 to 8 inches of the soil surface and approximately 1 inch from the cutting.

Water cuttings and maintain them in a healthy condition from the time the cuttings are planted until acceptance of the contract. Replace cuttings that die at Contractor'sr expense. The method of planting replacement cuttings must be as specified.

20-3.04B(2) Willow Branches

Comply with section 20-3.04B(1) except as specified.

Willow branches must be reasonably straight and 6.5 feet in length. Willow branches must be from end cuttings with suckers, terminal buds, leaves and branches left on. The base of each willow branch must be cut below a leaf bud at an angle of approximately 45 degrees.

20-3.04B(2) Willow Poles

Comply with section 20-3.04B(1) except as specified.

Willow poles must be at least 7 feet in length and 0.5 to 2 inches mm in diameter from tip to toe. Willow poles must be sealed at terminal ends by dipping the top 2 to 3 inches of each pole into a 50:50 mix of white latex paint and water or paraffin wax to prevent moisture loss.

20-3.04B(3) Organic Fertilizer

Must be a pelleted or granular form and must be one of the following:

| Organic Fertilizer | | |
|------------------------------------|--|---|
| Products | Guaranteed Chemical Analysis (N-P-K) (%) | Company |
| Biosol Mix [□] - Granular | 7-2-3 | Rocky Mountains Bioproducts Edwards, CO |
| Fertil-Fibers [™] | 6-4-1 | Quattro Environmental Coronado, CA |
| Sustane [□] | 5-2-4 | Natural Fertilizer of America Cannon Falls, MN |
| Approved Equal ¹ | (N) 5 to 7 (P) 1 to 5 (K) 2 to 10 | |

1 Approved equal must be within the ranges shown for N-P-K. The cumulative (N) release rate must be no more than 70 percent the first 70 days after incubation (30° C) with 100 percent at 350 days or more.

20-3.04B(4) Commercial Fertilizer

Commercial fertilizer (packet) shall be slow or controlled release and shall be in a biodegradable packet form. The packet shall gradually release nutrients over a 12-month period. Each packet shall have a weight of 10 g ± 1 g and shall have the following guaranteed chemical analysis:

| Ingredient | Percentage |
|----------------------|------------|
| Nitrogen | 20 |
| Phosphoric Acid | 10 |
| Water Soluble Potash | 5 |

20-3.04B(6) Backfill

Use excavated material for backfill and compact to a relative compaction of at least 90 percent.

20-3.04C CONSTRUCTION

Construct rock slope protection and willow planting in alternate layers.

Rock slope protection must be constructed such that, at locations to receive willow planting, the top edge is relatively even.

Willow planting work consists of placing netting, willow branches, willow poles, commercial fertilizer, organic fertilizer, and backfill.

Before placing willows, netting and 3 inches of backfill must be placed on the rock slope protection bench and thoroughly moistened. Willows must be re-cut using a grafting or branch knife at an angle before

EXHIBIT A
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE 1600 PERMIT
AND MITIGATION MONITORING PLAN

ATTACHED

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA 95670



LAKE ALTERATION AGREEMENT
NOTIFICATION No. 1600-2015-0176-R2
CLEAR LAKE

CITY OF LAKEPORT
LAKESHORE BOULEVARD BANK STABILIZATION

This Lake Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (Department) and City of Lakeport (the Permittee) as represented by Kevin Ingram.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee notified the Department on August 12, 2015, that the Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, the Department has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, the Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, the Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located on Clear Lake, in the County of Lake, State of California; Latitude 39° 03' 26.41" N, Longitude 122° 54' 47.58"W; Township 14N, Range 10E, Section 13, of the Lakeport U.S. Geological Survey (USGS) Quadrangle. See Exhibit A for Project Area and Impacts Map.

PROJECT DESCRIPTION

The project is limited to the replacement of damaged rock slope protection on the eastern edge of Lakeshore Boulevard. The southern project limits are 40-feet south of the edge of Sayre Street and the northern project limits are 115-feet north of the north edge of Jones Street. Approximately 565-feet of lake shore will be impacted by the removal and replacement of approximately 2,800-cubic yards of rock. The replacement material will be vegetated rock slope protection with a geo-cellular confinement system

(see Exhibits B and C). The project will also include minor roadway, curb and gutter repair and paved walkway and through curb drains.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: nesting birds, amphibians, and other aquatic and terrestrial plant and wildlife species.

The adverse effects the project could have on the fish or wildlife resources identified above include: soil compaction or other disturbance to soil layer, temporary release of contaminants (i.e. incidental from construction), disruption to nesting birds, reptiles and other wildlife.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

The Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. The Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to the Department personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. The Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of the Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. The Permittee shall notify the Department if the Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, the Department shall contact the Permittee to resolve any conflict.
- 1.4 Project Site Entry. The Permittee agrees that the Department personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Notification of Project Modification. The Permittee agrees to notify the Department of any modifications made to the project plans submitted to the Department.
- 1.6 Change of Conditions and Need to Cease Operations. If conditions arise, or change, in such a manner as to be considered deleterious to the lake or wildlife, operations shall cease until corrective measures approved by the Department are taken.

- 1.7 Does Not Authorize "Take." This Agreement does not authorize "take" of any listed species. Take is defined as hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture, or kill. If there is potential for take of any listed species to occur, shall consult with the Department as outlined in FGC Section 2081 and shall obtain the required state and federal threatened and endangered species permits.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, the Permittee shall implement each measure listed below.

- 2.1 Work Period. Work shall be timed during low lake levels and work shall be constructed when the site is dry. The time period for completing the work shall be confined to the period between June 1st and October 31st of the same calendar year during the term of this Agreement. Work within the lake shall be timed with awareness of precipitation forecasts and likely increases in lake level. Construction activities within the lake shall cease until all reasonable erosion control measures, have been implemented prior to all storm events. Construction equipment and material shall be removed from the floodplain if inundation is likely. Revegetation, restoration and erosion control work is not confined to this time period.
- 2.2 Work Period Modification. If the Permittee needs more time to complete the project activity, the work may be permitted outside of the work period and extended on a day-to-day basis (or for some other set period of time) by the Department representative who reviewed the project, or if unavailable, through contact with the Regional office (see Contact Information). The Permittee shall submit a written request for a work period variance to the Department. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. The work period variance request should consider the effects of increased lake levels, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Work period variances are issued at the discretion of the Department. The Department will review the written request to work outside of the established work period. The Department will have ten calendar days to review the proposed work period variance. The Department reserves the right to require additional measures to protect fish and wildlife resources as a condition for granting the variance.
- 2.3 Vegetation Removal. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. No native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged during construction. Where native trees or woody riparian vegetation split into several trunks close to ground level, the DBH shall be measured for each trunk and calculated as one tree. Using hand tools (clippers, chain saw, etc.), trees may

be trimmed to the extent necessary to gain access to the work sites. All cleared material/vegetation shall be removed out of the lake and adjacent areas.

- 2.4 Bird Nests. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the FGC. No trees that contain active nests of birds shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a Department representative. If construction is scheduled during the breeding season (approximately February 15th to August 31st) then a breeding bird survey will be conducted no more than 15 days prior to the start of construction by a Department approved biologist. All active bird nests will be marked following the survey to avoid destruction by equipment. If nesting raptors or migratory birds are identified within the area, a non-disturbance buffer will be established around the nest site. The size of the non-disturbance buffer and any other restrictions will be determined, before project activities commence, through consultation with the Department following completion of the survey.
- 2.5 Stabilize Exposed Areas. The Permittee shall take precautions to minimize turbidity/siltation during construction and post-construction periods. Precautions shall include, but are not limited to: best management erosion control practices to stabilize all exposed/disturbed areas within the project site to the greatest extent possible.
- 2.6 Sediment Control. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass in to the lake waters. **Products with plastic monofilament or cross joints in the netting that are bound/stitched (such as found in straw wattles/fiber rolls and some erosion control blankets) which may cause entrapment of wildlife, shall not be allowed.**

Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. Upon the Department's determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective Department approved control devices are installed or abatement procedures are initiated.

- 2.7 Removal of Silt Barrier. The Permittee is responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas

have been stabilized with erosion control vegetation (usually after the first growing season).

- 2.8 Heavy Equipment. No heavy equipment shall operate, or any excavation take place, in the portion of the lake where flowing water is present. Any equipment or vehicles driven and/or operated within or adjacent to the lake shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat. If maintenance or refueling of vehicles or equipment must occur on-site, use a designated area and/or a secondary containment, located away from drainage courses to prevent the runoff of storm water and the runoff of spills. Place drip pans or absorbent materials under vehicles and equipment when not in use. Equipment shall be stored in areas that any possible contamination from the equipment would not flow or be washed back into the lake.
- 2.9 Hazardous Materials. Debris, soil, silt, sand, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated work related activity shall not be stored where it could be washed back into the lake or where it will cover aquatic or riparian vegetation. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located more than twenty (20) feet from the lake and banks. Ensure that all construction areas have proper spill clean-up materials (absorbent pads, sealed containers, booms, etc.) to contain the movement of any spilled substances. All debris shall be disposed of properly. Best Management Practices (BMPs) shall be employed to accomplish these requirements. The Department shall be notified immediately by the Permittee of any spills and shall be consulted regarding clean-up procedures.
- 2.10 Invasive Species. Permittee shall conduct project activities in a manner that prevents the introduction, transfer, and spread of aquatic, riparian, and terrestrial invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, mussels, and bacteria), from one work site and/or water body to another. Prior to entering the impoundment, Permittee shall inspect equipment to be used in the impoundments for invasive species and, if any signs of invasive species are found, the equipment shall be cleaned to remove those species. All visible soil/mud, plant materials, and animal remnants on equipment will be removed prior to entering and exiting the work site and/or between each use in different water bodies. Permittee shall notify the Department immediately if an invasive species not previously known to occur within the work site is discovered during work activities by contacting the Department's Invasive Species Program by email at Invasives@wildlife.ca.gov.
- 2.11 Removal of Debris, Materials and Rubbish. The Permittee shall remove all project generated debris, building materials and rubbish from the lake and from areas

within one hundred and fifty (150) feet of the high water mark, where such materials could be washed into the lake following completion of project activities.

- 2.12 Site Restoration. All exposed/disturbed areas and access points within the lake and lake banks left barren of vegetation as a result of the construction activities, such as staging areas, shall be restored using locally native grass and/or forb seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass/forb seeds. Seeded areas shall be covered with broadcast straw and/or seeded erosion control blankets.

3. Reporting Measures

The Permittee shall meet each reporting requirement described below.

- 3.1 The Permittee shall notify the Department within two working days of beginning work within the lake. Notification shall be submitted as instructed in Contact Information section below. Email notification is preferred.
- 3.2 Upon completion of the project activities described in this Agreement, the work area shall be digitally photographed. Photographs and notification of project completion shall be submitted to the Department within 30 days of completion as instructed in Contact Information section below. Email submittal is preferred.

CONTACT INFORMATION

Any communication that the Permittee or the Department submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as the Permittee or the Department specifies by written notice to the other.

To the Permittee:

Kevin Ingram
City of Lakeport
225 Park Street
Lakeport, CA 95453
Phone: (707) 263-5615 ext. 11
Email: kingram@cityoflakeport.com

To the Contact

Lars Ewing
City of Lakeport
225 Park Street
Lakeport, CA 95453
Phone: (707) 263-2341

Email: lars.ewing@lakecounty.ca.gov

To the Department:

Department of Fish and Wildlife
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Attn: Lake and Streambed Alteration Program
Notification #1600-2015-0176-R2
Phone: (916) 358-2900 or 916-358-2885
Fax: (916) 358-2912
Email: R2LSA@wildlife.ca.gov

LIABILITY

The Permittee shall be solely liable for any violations of the Agreement, whether committed by the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute the Department's endorsement of, or require the Permittee to proceed with the project. The decision to proceed with the project is the Permittee's alone.

SUSPENSION AND REVOCATION

The Department may suspend or revoke in its entirety the Agreement if it determines that the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before the Department suspends or revokes the Agreement, it shall provide the Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide the Permittee an opportunity to correct any deficiency before the Department suspends or revokes the Agreement, and include instructions to the Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused the Department to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes the Department from pursuing an enforcement action against the Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects the Department's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

The Department may amend the Agreement at any time during its term if the Department determines the amendment is necessary to protect an existing fish or wildlife resource.

The Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by the Department and the Permittee. To request an amendment, the Permittee shall submit to the Department a completed Department "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in the Department's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by the Permittee in writing, as specified below, and thereafter the Department approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, the Permittee shall submit to the Department a completed Department "Request to Amend Lake or

Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in the Department's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), the Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, the Permittee shall submit to the Department a completed Department "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in the Department's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). The Department shall process the extension request in accordance with FGC 1605(b) through (e).

If the Permittee fails to submit a request to extend the Agreement prior to its expiration, the Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of the Department's signature, which shall be: 1) after the Permittee's signature; 2) after the Department complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire three years from the date signed by the Department, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. The Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Exhibit A. Map of Project Area and Impacts
- B. Exhibit B. Rock Slope Protection Detail
- C. Exhibit C. Willow Shoot Detail

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of the Permittee, the signatory hereby acknowledges that he or she is doing so on the Permittee's behalf and represents and warrants that he or she has the authority to legally bind the Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If the Permittee begins or completes a project different from the project the Agreement authorizes, the Permittee may be subject to civil or criminal prosecution for failing to notify the Department in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF LAKEPORT



Kevin Ingram
Community Development Director

1/27/2016
Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Tina Bartlett
Regional Manager

2/1/16
Date

Prepared by: Tanya Sheya
Environmental Scientist

Exhibit A. Map of Project Area and Impacts

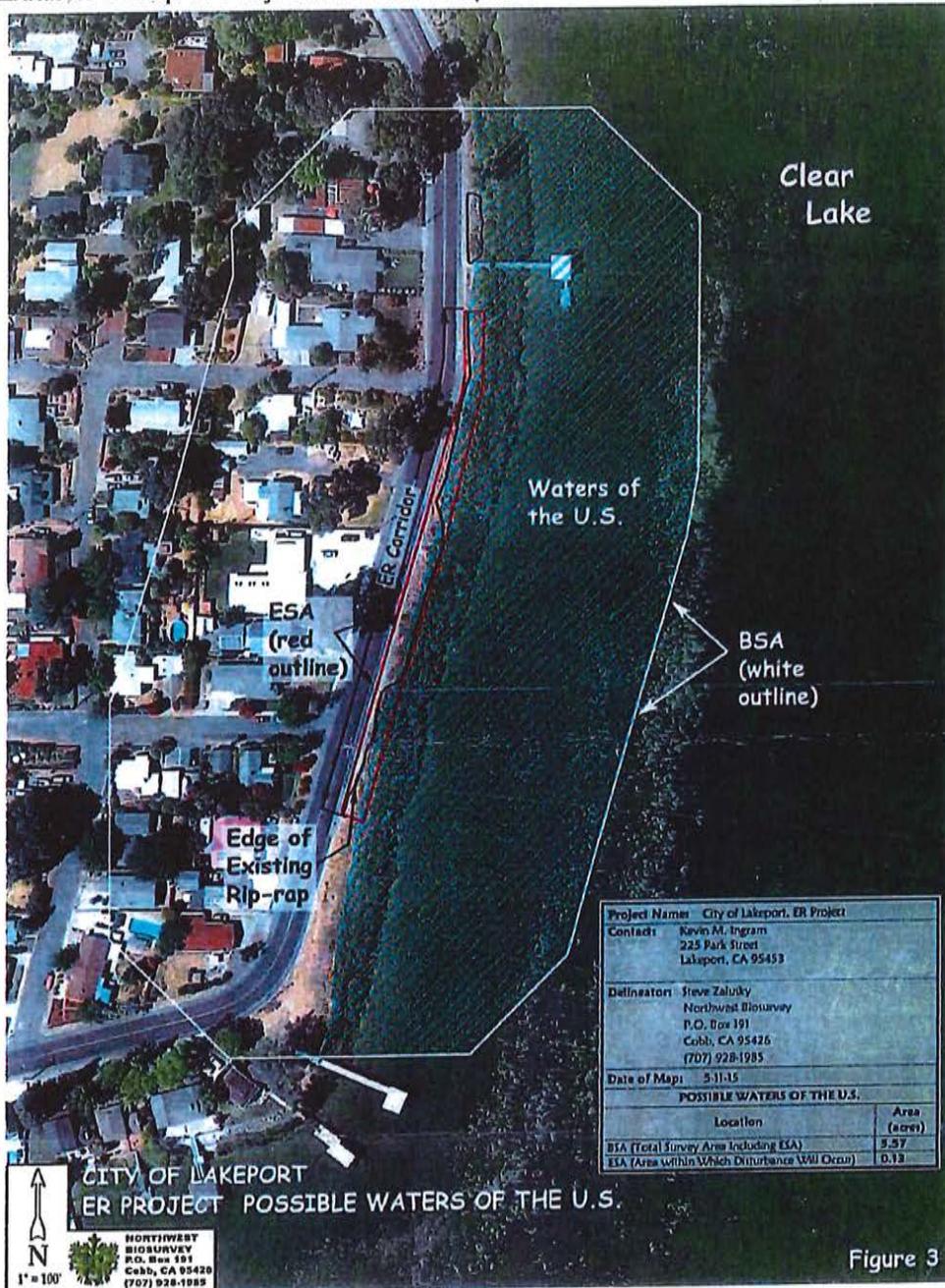


Figure 3

Exhibit C. Willow Shoot Detail

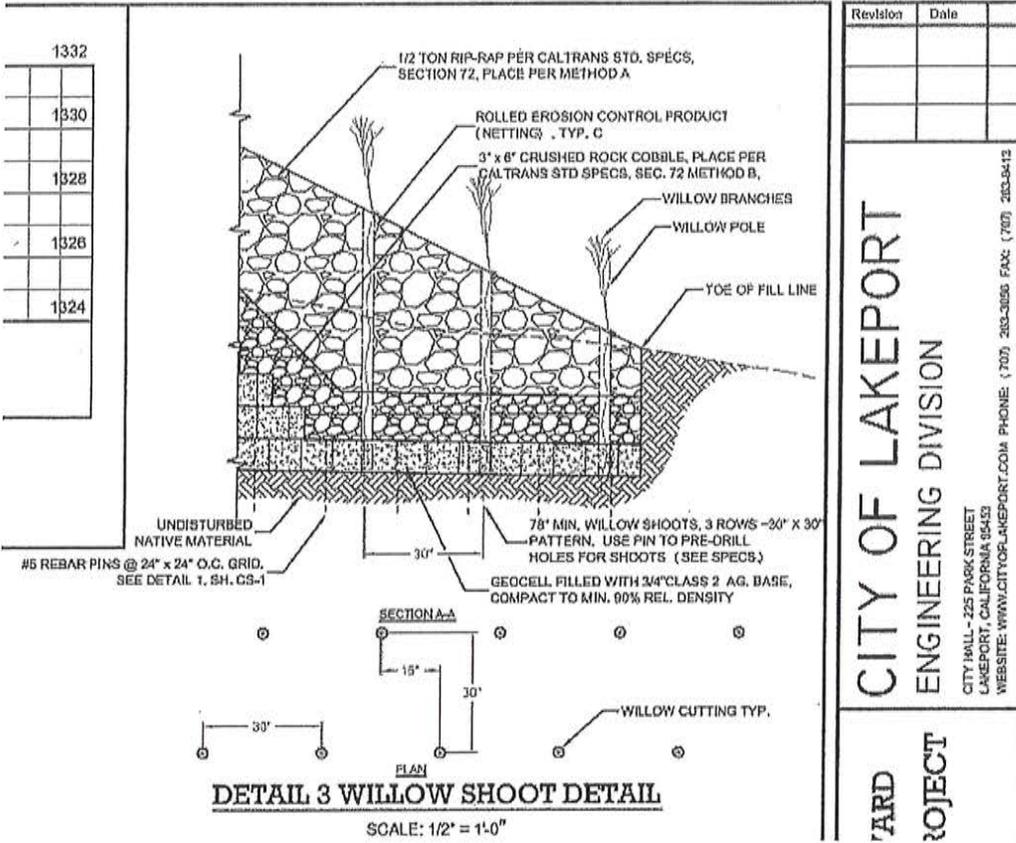


EXHIBIT B
ARMY CORP OF ENGINEERS PERMIT

NOT YET ISSUED

EXHIBIT C
REGIONAL WATER QUALITY CONTROL BOARD 401 CERTIFICATION

NOT YET ISSUED

EXHIBIT D
IMPROVEMENT PLANS (11X17)