



# Town of Apple Valley

## ***INVITATION FOR BIDS***

### ***Containing:***

***Notice Inviting Sealed Bids, Instructions to Bidders, Special Provisions, Proposal, Contract and other information for:***

## **Installation of Shade Structures James Woody Park**

***Project No. 2014-PR02***

*Mayor Art Bishop  
Mayor Pro Tem Larry Cusack  
Councilmember Curt Emick  
Councilmember Scott Nassif  
Councilmember Barb Stanton*

## INDEX TO DOCUMENTS

<u>Title</u>	<u>Section</u>
Notice Inviting Sealed Bids	A-1 to A-2
Instructions to Bidders	B-1 to B-4
Special Provisions	
• Sub-Section 1 General Provisions	C-1 to C-13
• Sub-Section 2 Specific Project Provisions	C-14 to C-20
Proposal	D-1 to D-7
Bid Bond	E-1
Information Required of Bidders	F-1
Faithful Performance Bond	G-1
Labor and Material Bond	H-1 to H-2
Worker's Compensation Certificate of Insurance	I-1
Insurance Requirements for Town of Apple Valley	J-1
Instructions for Execution of Instrument	K-1
Contract Agreement	L-1 to L-10
Attachments	
• Special Provisions for Community Development Block Grant Projects	
• Project Plans	

**Section A**  
**NOTICE INVITING SEALED BIDS**  
**TOWN OF APPLE VALLEY**

**PROJECT NO. 2014 – PR02**

**BIDS MUST BE RECEIVED BY:** 10:00 am, on October 23, 2014

**BIDS TO BE OPENED BY:** 10:00 am, on October 23, 2014

**PLACE OF BID RECEIPT:** Parks and Recreation  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

1. Notice Is Hereby Given that sealed bids will be received by the Parks and Recreation Manager of the Town of Apple Valley for the following Project: **Installation of Shade Structures, James Woody Park.**
2. Requesting Plans and Specifications: Contact Parks and Recreation Division, 14955 Dale Evans Parkway, Apple Valley, CA 92307. Telephone 760-240-7000 extension 7884; fax 760-240-7887. Cost: \$20.00 for each set, \$40.00 if mailed, Non-Refundable.
3. Description of The Work: Provide necessary labor, equipment and materials to install Town furnished HXE 28 - Mult-Rib shade structures at James Woody Park, in accordance with the project plans, standard specifications, special provisions, and as directed by the Parks and Recreation Manager.
4. Engineer's Estimate: **\$39,000.** This is a federally funded project.
5. Completion of Work: All work shall be completed within **20 working days** following written notice to proceed from the Town.
6. Contractor's License Classification: In accordance with the Provisions of California Public Contract Code Section 3300, the Town of Apple Valley has determined that the Contractor shall possess a valid Class [A] General Engineering or Class [B] General Building Contractor's License at the time that the contract is awarded. Failure to possess the specified license shall render the bid as non-responsive and shall act as a bar to award of the contract to any bidder not possessing said license at the time of award.
7. Bid Bond: Each Bid must be accompanied by a Certified or Cashier's Check or Bidder's Bond payable to the Town of Apple Valley, in an amount not less than ten (10) percent of the Bid, as a guarantee that the Bidder will enter into a contract if awarded the work.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

8. A bid must be complete, for all of the work specified in the Invitation for Bids.
9. Deliver Bids To: Parks and Recreation Division, Town of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, CA 92307. \*NOTE\* If you choose to mail your Bid Proposal the outside envelope MUST be clearly marked as "SEALED BID FOR: **Installation of Shade Structures, James Woody Park.** DELIVER IMMEDIATELY TO PARKS AND RECREATION OFFICE".
10. Upon award of contract, a maximum of six (6) sets of plans and specifications will be provided to the Contractor for construction purposes.

**TOWN OF APPLE VALLEY**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Ralph Wright  
Parks and Recreation Manager

## Section B

### INSTRUCTION TO BIDDERS

**FORM OF PROPOSAL:** The proposal shall be made on the forms provided herein beginning at Section D. The Bidder may provide additional forms or pages, if needed. The proposal shall be enclosed in a sealed envelope bearing the name of the Bidder and the name of the project as described under Section A.

**DELIVERY OF PROPOSALS:** The proposal shall be delivered by the time and to the place stipulated in the Notice Inviting Sealed Bids. It is the Bidder's sole responsibility to see that his proposal is received in proper time. Any proposal received after the scheduled closing time for receipt of proposals may be returned to the Bidder unopened unless an extension has been granted by the Town. Bidders or their authorized agents are invited to be present.

**MODIFICATIONS AND ALTERNATIVE PROPOSALS:** Unauthorized conditions, limitations or provisos attached to a proposal will render it informal and may be cause for rejection. The complete proposal forms shall be without inter-lineations, alterations or erasures, unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid. No oral, telegraphic or telephonic proposals or modifications will be considered.

**WITHDRAWAL OF PROPOSAL:** The proposal may be withdrawn upon request by the Bidder without prejudice to himself prior to, but not after the time fixed for opening of bids, provided that the request is in writing, has been executed by the Bidder or his duly authorized representative, and is filed with the Town Engineer. No proposal may be withdrawn during the period of sixty (60) calendar days after the opening of proposals.

**BIDDER'S SECURITY:** Each bid shall be accompanied by a suitable bid security as specified in Section D. The check or bid bond shall be given as a guarantee that the Bidder shall, if it is awarded to him or her, execute the contract in conformity with the contract documents and shall provide the evidence of insurance and furnish the necessary bonds as specified in the contract documents, within fifteen (15) calendar days after written notice of the award. In case of the Bidder's refusal or failure to do so, the check or bond, as the case may be, shall be forfeited to the Town. No bidder's bond will be accepted unless it conforms substantially to Section E.

**APPROXIMATE ESTIMATE:** The quantities shown in the proposal bid sheet, in any estimate included in the Special Provisions, or elsewhere in the documents, shall be considered as approximate only, being listed therein for the purpose of serving as a general indication of the amount of work or materials to be performed or furnished, and as a basis for the comparison of bids; and the Town does not guarantee nor agree, either expressly or by implication, that the actual amount required will correspond

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

therewith, but reserves the right to increase or decrease the amount of any item or portion of work or material to be performed or furnished, or to omit any such item or portion, in accordance with the Special Provisions or Standard Specifications, under which the work is to be constructed, without any way invalidating the contract, should such increase, decrease or omission be deemed necessary or expedient.

**ADDENDA:** The Town Engineer may, from time to time, issue addenda to the contract documents during the period of advertising for bids, for the following purposes: (a) revising Prevailing Wage Scales, or (b) clarifying, correcting or otherwise amending quantities of work under Special Provisions, plans or bid proposal.

Securers of contract documents shall be notified of, and furnished with, copies of such addenda, either by certified mail or personal delivery, during the period of advertising at no additional cost.

**DISCREPANCIES IN PROPOSALS:** The Bidder shall set forth each item of work, in clearly legible figures, a unit or line item bid for the item in the respective spaces provided for this purpose.

In case of discrepancy between the unit price and the total set forth for the item, the unit price shall prevail, provided, however, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or in the case where the unit price is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

(1) As to lump sum items, the amount set forth in the "Total" column shall be the unit price.

(2) As to unit price items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

In case of discrepancy between words and figures, the words shall prevail.

**COMPETENCY OF BIDDERS:** In selecting the lowest responsible bidder, consideration will be given not only to the financial standing, but also to the general competency of the bidder for the performance of the work covered by the proposal. To this end each proposal shall be supported by a statement of the bidder's experience on the form entitled "Information Required of Bidder" bound herein. No agreement for the work will be executed with a contractor who is not licensed in accordance with the laws of the State of California under applicable provisions of the Business and Professions Code. The licensing requirements for contractors shall apply also to subcontractors.

**BIDDER'S EXAMINATION OF SITE AND CONTRACT DOCUMENTS:** Bidders must satisfy themselves by personal examination of the location of the proposed work and by such other means as they may prefer as to the proposal, plans, specifications, contract

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

form and actual conditions and requirements of the work, and shall not at any time after submission of the bid, dispute, complain, or assert that there was any misunderstanding in regard to the conditions to be encountered, the character, quality, and quantities of work to be performed and materials to be furnished, and the requirements of the proposal, plans, specifications, and the contract form. The submission of a proposal shall be considered conclusive evidence that the Bidder has made such examination.

**DISQUALIFICATION OF BIDDERS:** No person, firm, or corporation shall be allowed to make, file or be interested in more than one bid for the same work, unless alternate bids are specifically called for. A person, firm or corporation that has submitted a subproposal to a bidder, or that has quoted prices of materials to a bidder is not hereby disqualified from submitting a subproposal or quoting prices to other bidders or making a prime proposal. If there is a reason to believe that collusion exists among the bidders, all bids will be rejected.

**RETURN OF BID SECURITY:** The successful bidder's proposal guarantee shall be held until the contract is executed. Bid security shall be returned to unsuccessful bidders within twenty (20) calendar days after the successful bidder has signed the contract.

**AWARD OF CONTRACT:** The Town reserves the right to reject any or all bids or any parts thereof or to waive any irregularities or informalities in any bid or in the bidding to the extent permitted by law. The award of the contract, if made by the Town, will be to the lowest responsible and qualified bidder. The award, if made, will be within sixty (60) calendar days after the opening of the proposals; provided that the award may be made after said period if the successful bidder has not given the Town written notice of the withdrawal of his bid.

**ALTERNATES:** In accordance with Public Contract Code Section 20103.8(b), the lowest bid shall be the lowest total of the bid price on the base bid plus any alternative bid item(s), and also providing that pursuant to that Section, the Town reserves the right to deduct from the contract any alternative bid item(s).

**SUBCONTRACTOR INFORMATION:** Each bidder shall submit information regarding subcontractors on this project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100, et. seq.).

**EXECUTION OF AGREEMENT:** The bidder to whom award is made shall execute a written contract with the Town in the form included in these contract documents and shall secure all insurance and bonds as herein provided within fifteen (15) calendar days from the date of mailing of written notice of the award. Failure or refusal to enter into the agreement or to conform to any of the stipulated requirements shall be just cause for the annulment of the award and forfeiture of the bidder's security. In the event the bidder to whom an award is made fails or refuses to execute the Agreement within said time, the Town may declare the bidder's security forfeited, and it may award the work to the next lowest bidder, or may call for new bids.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

If the successful bidder refuses or fails to execute the contract, the Town may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses to execute the contract, the Town may award the contract to the third lowest responsible bidder to execute the contract; such bidder's securities shall be likewise forfeited to the Town.

**INSURANCE AND BONDS:** The Contractor shall not begin work under the Agreement until it has given the Town evidence of comprehensive public liability insurance and Workers' Compensation Insurance coverage as provided in the General Provisions and Sections "I" and "J" and provided Faithful Performance and Labor and Material bonds as described in General Provisions and Sections "G" and "H".

**TELEPHONES:** Bidders are hereby notified that Town will not provide telephones for their use at the time of receipt of bids.

**MATERIAL SUPPLIER:** If the firm who is signatory on the contract is supplying materials only, a payment bond need not be furnished.

**INTERPRETATION OF PLANS AND DOCUMENTS:** If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the drawings, specifications or other contract documents, or finds discrepancies in or omissions from the drawings and specifications, he may submit to the Town Engineer a written request for an interpretation or correction. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the contract document will be made only by an Addendum duly issued, and a copy of such Addendum will be mailed or delivered to each person receiving a set of the contract documents. No oral interpretation of any provision in the contract documents shall be binding.

**SALES AND/OR USE TAXES:** Except as may be otherwise specifically provided herein, all sales and/or use taxes assessed by federal, state or local authorities on materials used or furnished by the Contractor in performing the work hereunder shall be paid by the Contractor.



## **Section C**

# **SPECIAL PROVISIONS**

### **Sub - Section 1. General Provisions**

The general provisions which shall apply to this contract shall be those set forth in the Standard Specifications for Public Works Construction, Latest Edition, published by Building News, Inc., hereinafter referred to as Standard Specifications. The Standard Specifications are referred to and by this reference made a part hereof as though set forth at length. The Contractor is required to comply with the Standard Specifications in addition to the conditions set forth in these General Provisions, Specific Project Provisions and as stated in the Special Provisions of these contract documents.

#### **I. AWARD OF BID AND EXECUTION OF CONTRACT**

**I-A. DECISION AS TO WHICH CONTRACTOR IS THE LOWEST AND BEST BIDDER:** All bidders must submit with their proposals satisfactory evidence that they are capable of performing the work in accordance with plans and specifications. The Town Engineer may require any bidder bidding on any public improvement to submit experience records covering a three-year period. The Town Council may reject the bid of any bidder who has been delinquent or unfaithful in the performance of any previous contract work. The decision of the Town Council as to which bidder is considered the "lowest responsible bidder" will be based not only on the actual amount of the bid, but also on the relative competence and experience of the bidders, with particular regard to the quality performance of any work done by them for the Town in the past, and such decisions shall be final and binding upon all parties.

**I-B. EXECUTION OF THE CONTRACT:** The contract, in the form set forth in Exhibit "L" shall be executed by the successful bidder in accordance with the Instruction for Execution of Documents, and returned to the Town for execution by the Town, and shall be accompanied by bonds as described in paragraph I-C and the evidence of insurance required by paragraph I-D, all within fifteen (15) calendar days from the date written notice of the award is mailed to bidder. No bidder proposal shall be considered binding upon the Town until such time as the contract document has been executed by the Town.

**I-C. CONTRACT BONDS:** The successful bidder shall furnish to the Town, at no cost to the Town, two surety bonds. One bond shall be in the amount of one hundred percent (100%) of the contract price in the form set forth in Exhibit "G" to guarantee faithful performance of the contract work. The other bond, in an amount not less than one hundred percent (100%) of the contract price in the form set forth in Exhibit "H" shall be furnished to secure payment of those supplying labor and materials as required by the California Civil Code. Each bond shall be executed in accordance with the instruction set forth in Exhibit "K" and each bond shall be executed by a corporate surety acceptable to, and approved by the Town Attorney.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**I-D. INSURANCE:** The Contractor shall at all times, during the term of this contract, carry, maintain and keep in full force and effect, a policy or policies of comprehensive public liability insurance with an insurance company acceptable to, and approved by, the Town Engineer and Town Attorney, within minimum limits of One Million Dollars (\$1,000,000.00) combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the Contractor, together with an endorsement in substantially the form set forth in Exhibit "J" attached hereto. The Contractor shall also at all times during the term of this contract carry, maintain and keep in full force and effect a policy or policies of Workers' Compensation insurance and shall provide to the Town evidence of such coverage in the form set forth in Exhibit "I" attached hereto.

**I-E. COMPLIANCE WITH PROVISIONS OF THE PUBLIC CONTRACT CODE:** All bids and contracts shall conform to the provisions of Sections 4100 through 4114, inclusive, of the Public Contract Code, as amended, concerning subcontractors and subcontracts.

**I-F. REJECTION OF BIDS:** Proposals may be rejected by the Town Council where, upon evidence of a prior performance of the bidder, the Town Council has made a finding that the bidder is not a responsible contractor because of unsatisfactory performance within the past three (3) years with the Town or with other public entities. The Town reserves the right to reject any or all bids and to waive any irregularity or informality in any bid to the extent permitted by law.

## **II. LEGAL RELATIONS AND RESPONSIBILITY TO THE TOWN**

**II-A. LAWS TO BE OBSERVED:** The Contractor shall keep himself fully informed on all existing and pending State and national laws and all municipal ordinances and regulations of the Town, which in any manner affect those employed in the work, or the material used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall particularly observe all ordinances of the Town in relations to the obstruction of streets or conduct of the work, keeping open passageways and protecting the same where they are exposed or dangerous to traffic.

**II-B. SOCIAL SECURITY REQUIREMENTS:** The Contractor shall furnish to the Town satisfactory evidence that he and all subcontractors working for him are complying with all requirements of the Federal and State Social Security legislation. The Contractor, at any time on request, shall satisfy the Town that the Social Security and withholding tax are being properly reported and paid.

**II-C. PREVAILING WAGES:** Bidders are advised that this project is funded with Community Development Block Grant (CDBG) funds and other public funds. The federal requirements of the Davis-Bacon Act will apply to this project and those requirements will be enforced. The prime contractor and subcontractor are required to pay their laborers and mechanics employed under this contract a wage not less than the minimum wage for the work classifications specified in both the Federal and State wage

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

decisions, when the prime contract amount exceeds \$2,000. The higher of the two wage classifications, State or Federal, Prevailing Wage will be enforced for all work under this contract. The prime contractor is responsible for ensuring subcontractor compliance with Davis-Bacon and Related Act requirements. The Federal Labor Standards Provisions (HUD 4010) apply. A copy of the Federal Prevailing Wage and HUD 4010 are attached.

**II-D. PENALTIES:** The Contractor shall comply with Labor Code Section 1775 and he shall forfeit, as a penalty to the Town, the sum of not more than fifty dollars (\$50.00) as determined by the labor commissioner, for each calendar day or portion thereof during which the Contractor or any subcontractor under him has paid to any workman employed in the project an amount less than that required by the provisions of the preceding Paragraph II-C.

**II-E. WORKING HOURS:** The Contractor shall forfeit, as penalty to the Town, the sum of twenty-five dollars (\$25.00) for each workman employed in the execution of the contract by him or by any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, in violation of the provisions of Labor Code section 1813.

**II-F. APPRENTICES:** Attention is directed to the provisions of Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him. It shall be Contractor's responsibility to ensure that all persons shall comply with the requirements of said sections in the employment of apprentices.

Information relative to apprenticeship standards and administration of the apprenticeship program may be obtained from the Department of Industrial Relations, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

**II-G. REGISTRATION OF CONTRACTORS:** Only a Contractor licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professions Code, beginning at Section 7000, shall be permitted to enter into a contract with the Town for any public improvements.

**II-H. PERMITS AND LICENSES:** The Contractor shall procure all permits and licenses (including Apple Valley business licenses), pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.

**II-I. PATENTS:** The Contractor shall assume all responsibility arising from the use of any patented, or allegedly patented materials, equipment, devices or processes used on or incorporated in the work, and shall defend, indemnify, and hold harmless the Town, and each of its officers, agents, and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**II-J. INDEMNITY:** The Contractor agrees to defend, indemnify, and save harmless the Town and each of its officers, agents, and employees and agents including but not limited to the firm, its officers and employees of Charles Abbott Associates, Inc. who are providing services to the Town from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, including, but not limited to, any and all direct and indirect consequence of entering into this contract or of injury, sickness, or disease, including death, to persons or injury to, or destruction of, property, including, but not limited to, the loss of use of property, resulting directly or indirectly from or in any manner connected with or pertaining to any and all operations, and any and all activities, omissions and conditions in any manner connected therewith or pertaining thereto, of the Contractor under the contract, subject to any limitations imposed by Civil Code Section 2782.

**II-K. NOTICE:** The address given in the Contractor's proposal is the place to which all notices to the Contractor shall be mailed or delivered. The mailing to or delivering at the above named place of any notice shall be deemed sufficient service thereof upon the Contractor, and the date of that service shall be the date of such mailing or delivery. Such address may be changed at any time by written notice signed by the Contractor and delivered to the Town Engineer.

**II-L. CONTRACTOR'S RESPONSIBILITY FOR WORK:** Until the final acceptance of the work by the Town, by written action of the Town Engineer, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part of the work by the action of the elements or any other cause. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the work occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages arising from the sole negligence of willful misconduct of the Town, its officers, agents or employees. In the case of suspension of work from any cause whatever, the Contractor shall be responsible for all materials and the protection of work already completed and shall properly store and protect them if necessary and shall provide suitable drainage and erect temporary structures where necessary.

**II-M. MAINTENANCE AND GUARANTEE:**

(1) The Contractor hereby guarantees that the entire work constructed by him under the contract will meet fully all requirements as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship that become evident within one year after the date of the final payment, and to restore to full compliance with the requirements of these specifications including any test requirements set forth herein for any part of the constructed hereunder, which during said one-year period is found to be deficient with respect to any provisions of the specifications. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for the same from the Engineer. The Contractor and his sureties shall be liable to the Town for the cost thereof.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

(2) The guarantees and agreements set forth in Subsection (1) shall be secured by a surety bond which shall be delivered by the Contractor to the Town before the Notice of Completion and acceptance of the work, by the Town Engineer, as provided in Subsection 6-8 of the Standard Specifications for Public Works Construction, latest edition, published by Building News, Inc. Said bond shall be in the form approved by the Town Attorney and executed by a surety company or companies satisfactory to the Town, in the amount of 100% of the contract. Said bond shall remain in force for a period of one year after the date of Notice of Completion and acceptance. Alternatively, the Contractor may provide for the Faithful Performance Bond furnished under the contract to remain in force and effect for said amount until the expiration of said one-year period.

### **III. PROSECUTION AND PROGRESS OF THE WORK**

**III-A. WORK SCHEDULE:** As soon as notified of the award of the contract, the Contractor shall prepare and submit to the Town Engineer a work schedule for accomplishing the work. Said schedule must show the dates of the expected start and completion of the various items of the contract work. During the pre-construction meeting between the Contractor and the Town Engineer, the work schedule will be discussed and modified, if necessary, by mutual agreement. Should it become necessary for the Town to delay temporarily the work schedule agreed upon during the scheduling conference, every effort will be made to permit a new work schedule at the time most convenient to the Contractor, thus permitting the project to proceed with the shortest intramural movement of the equipment. The Contractor shall notify the Town Engineer in all such cases, in order to arrive at a mutually satisfactory schedule.

**III-B. SUBLETTING AND ASSIGNMENT:** The Contractor shall give his personal attention to the fulfillment of the contract and shall keep the work without under his control. The Contractor shall not assign, transfer nor sublet any part of the work without the written consent of the Town by the Town Engineer and of the surety of the Contractor's bond, and such consent of Surety, together with a copy of the subcontract, shall be filed with the Town Engineer. No assignment, transfer or subletting, even though consented to, shall relieve the Contractor of his liabilities under the contract. Subcontractors shall not be recognized as such, and all persons engaged in the project will be considered as employees of the Contractor, their work being subject to the provisions of the contract and the specifications. Should any subcontractor fail to perform the work undertaken by him to the satisfaction of the Town Engineer, said subcontractor shall be removed immediately from the project upon request by the Town Engineer, shall not again be employed on the work, and the Contractor shall be held liable for the deficient work.

The Contractor shall submit to the Town a list with the names, addresses and telephone numbers of all subcontractors who will work under him.

**III-C. CHARACTER OF WORKERS:** The Contractor shall employ none but competent foremen, laborers and mechanics. Any overseer, superintendent, laborer or other person employed on the work by the Contractor who is intemperate, incompetent,

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

troublesome or otherwise undesirable, or who fails or refuses to perform the work in the manner specified herein, shall be discharged immediately and such person shall not again be employed on the work.

**III-D. AGENTS OR FOREMEN:** In the absence of the Contractor from the site of the project, even if such is only of a temporary duration, he must provide and leave at the site a competent and reliable English-speaking agent or foreman in charge. All notices, communications, orders or instructions given, sent to, or served upon, such agent or foreman by the Town Engineer shall be considered as having been served upon the Contractor.

**III-E. TEMPORARY STOPPAGE OF CONSTRUCTION ACTIVITIES:** The Town Engineer shall have the authority to suspend the contract work, wholly or in part, for such a period of time as he may deem necessary, due to unsuitable weather, or to such other conditions as he considered unfavorable for the proper prosecution of the work, or for such time as he may deem necessary due to failure on the part of the Contractor or his workmen to carry out orders or to perform any of the requirements of the contract. The Contractor shall immediately comply with such an order from the Town Engineer and shall not resume operations until so ordered in writing.

**III-F. TIME OF COMPLETION AND LIQUIDATED DAMAGES:** If all the contract work is not completed in all parts and requirements within the time specified in the contract documents, the Town shall have the right to grant or deny an extension of time for completion, as may seem best to serve the interest of the Town. The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by acts of God or of the Public Enemy, acts of the State, fire not due to acts of contractors, of subcontractors, floods, epidemics, quarantine, restrictions, strikes, freight embargo or unusually severe weather, or delays of subcontractors due to such causes, provided that the Contractor shall, within ten (10) days from the beginning of such delay, notify the Town, in writing, of the cause of the delay. The Town will ascertain the facts and the extent of the delay, and the finding thereon shall be final and conclusive. If the Town deems it appropriate to assess the contractor liquidated damages, such damages shall be of a minimum amount of **\$250 per day**.

**III-G. SUSPENSION OF CONTRACT:** If at any time, in the opinion of the Town Engineer, the Contractor fails to supply an adequate working force, manufactured articles, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in any by the terms of the contract, notice thereof in writing will be served upon him, and should he neglect or refuse to provide means for a satisfactory compliance with the contract within the time specified in said notice and as directed by the Town Engineer, the Town Engineer shall have the power to suspend the operation of the contract and discontinue all work or any part thereof, subject to review by the Town Council. Thereupon the Contractor shall discontinue such work, or such part thereof as the Town may designate, and the Town may thereupon, by contract or otherwise, as it may determine, complete the work or such part thereof, and charge the entire expense of so completing the work or any part thereof to the Contractor, and for such completion the Town itself or its Contractors

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

may take possession of and use, or cause to be used in the completion of the work, or any part thereof, any such materials, implements and tools of every description as may be found at the place of such work. All expense charged under this paragraph shall be deducted and paid for by the Town out of any moneys then due or to become due the Contractor under the contract, or any part thereof, and in such accounting the Town shall not be held to obtain the lowest figure for the work for completing the contract, or any part thereof, or for ensuring its proper completion, but all sums paid therefore shall be charged to the Contractor. In case the expenses so charged are less than sum which would have been payable under the contract, if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference, and in case such expense shall exceed the amount payable under the contract, then the Contractor shall pay the amount of the excess to the Town, upon completion of the work, without further demand being made therefore. In the determination of the question as to whether or not there has been any such noncompliance with the contract as to warrant the suspension or annulment thereof, the decision of the Town Council shall be binding on all parties to the contract.

**IV. MEASUREMENT AND PAYMENT**

**IV-A. MEASUREMENT AND PAYMENT:** Measure of the quantities of work and payments therefore shall be in accordance with Section 9 of the Standard Specifications. The monthly payment date shall be the last calendar day of each month. A measurement of work performed and a progress estimate of the value thereof based on the contract and of the monthly payment shall be prepared by the Contractor and submitted to the Town Engineer before the tenth day of the following month for verification and payment consideration.

**IV-B. FINAL INVOICE AND PAYMENT:**

(1) Whenever in the opinion of the Town Engineer, the Contractor shall have completely performed the contract on his part, the Town Engineer shall notify the Town Clerk that the contract has been completed in its entirety. The Contractor shall then submit to the Engineer for approval, a written statement of the final quantities of contract items for inclusion in the final invoice. Upon receipt of such statement, the Town Engineer shall check the quantities included therein and shall authorize the Contractor to submit an invoice which in the Engineer's opinion shall be just and fair, covering the amount and value of the total amount of work done by the Contractor, less ten percent (10%) of the total work done. The Engineer shall then request that the Town accept the work and that the Town Clerk be authorized to file, on behalf of the Town in the office of the San Bernardino County Recorder, a Notice of Completion of the work herein agreed to be done by the Contractor.

(2) On the expiration of thirty-five (35) days after the date of recording the Notice of Completion, the Town shall pay to the Contractor the amount remaining after deducting from the amount of value stated in the invoice all prior payments to the Contractor and all amounts to be kept and retained under the provisions of the contract, and shall release the Faithful Performance Bond and Labor and Material Bond.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

(3) Substitution of Securities for Retention: In accordance with Public Contract Code Section 22300, contractor may substitute securities for retention moneys to be withheld to ensure performance under this contract. At the request and expense of Contractor, securities equivalent to the amount withheld may be deposited with the Town, or with an approved state or federally chartered bank as the escrow agent, who shall then pay such moneys to Contractor, and upon satisfactory completion of the contract, the securities shall be returned to the contractor. It is the Contractor's obligation to secure the services of a state or federally chartered bank to act as escrow agent. Securities eligible for investment include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit or any other security mutually agreed to by the Contractor and the Town. Contractor shall be the beneficial owner of any securities for retention moneys withheld and shall receive any interest earned by the securities.

**IV-C. EXTRA WORK:** Extra work, when ordered in writing by the Town Engineer and accepted by the Contractor, shall be paid for under written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and the Town Engineer. All extra work shall be adjusted daily upon report sheets prepared by the Town Engineer, furnished by the Contractor, and signed by both parties, and said daily report shall be considered thereafter the true records of extra work done.

**IV-D. UNPAID CLAIMS:** If upon or before the completion of the work herein agreed to be performed or at any time prior to the expiration of the period within which claims of lien may be filed for record as prescribed by the Code of Civil Procedure of the State of California, any person or persons claiming to have performed any labor or furnished any materials, supplies or services towards the performance of completion of this contract or if they have agreed to do so, shall file with the Town a verified statement of such claim, or if any person shall bring against the Town or any of its agents any action to enforce such claim, the Town shall until the discharge thereof, withhold from the moneys that are under its control, as much as shall be sufficient to satisfy and discharge the amount in such notice or under such action claimed to be due, together with the cost thereof; provided, that if the Town shall in its discretion permit the Contractor to file such additional bond as is authorized by the Code of Civil Procedure in a penal sum equal to one and one-quarter times the amount of said claim, said money shall not thereafter be withheld on account of such claim.

**IV-E. ACCEPTANCE:** The parties agree that no certificate given shall be conclusive evidence of the faithful performance of the contract, either in whole or in part, and that no payment shall be construed to be in acceptance of any defective work or improper materials. Further, the certificate or final payment shall not terminate the Contractor's obligations under his warranty herein above. The Contractor agrees that payment of the amount due under the contract and the adjustments and payments due for any work done in accordance with any alterations of the same, shall release the Town, the Town Council and its officers and employees from any and all claims or liability on account of work performed under the contract or any alteration thereof. (Section 7100, Public Contract Code)



## **V. CONTROL OF WORK**

**V-A. AUTHORITY OF THE TOWN ENGINEER:** The Town Engineer shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed as to the manner of performance and rate of progress of the work, and any and all questions which may arise as to the interpretation of the plans and specifications. The Town Engineer shall likewise decide any and all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the Town Engineer shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly.

**V-B. CONFORMITY WITH PLANS AND ALLOWABLE VARIATION:** Finished surfaces shall in all cases conform with the lines, grades, cross-sections and dimensions shown on the plans. Minor deviations from approved plans, whenever required by the exigencies of construction, shall be determined in all cases by the Town Engineer and authorized in writing.

**V-C. PROGRESS OF THE WORK:** The Contractor shall begin work on the date agreed upon following the scheduling conference mentioned in Paragraph III-A hereof, and shall diligently prosecute the same to completion before the expiration of the time limit appearing in the specifications.

**V-D. SAMPLES:** The Contractor shall furnish all products and materials required to complete the work. All materials and products must be of the specified quality and fully equal to samples, when samples are required. Whenever required, the Contractor shall submit to the Town Engineer for test, and free of charge, samples of any one of the materials or products proposed to be used in the work. Said samples shall be delivered by the Contractor to the place within the Town designated by the Town Engineer. Rejected material must be immediately removed from the work by the Contractor and shall not again be brought back to the site.

**V-E. TRADE NAMES AND ALTERNATIVES:** For convenience in designation on the plans or in the specifications, certain equipment or articles or materials to be incorporated in the work may be designated under a trade name of manufacturer and his catalog information. The use of an alternative equipment or an article or equipment which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the approval of the Town Engineer, in accordance with the following required by Section 3400 of the Public Contract Code of the State of California.

The burden of proof as to the comparative quality and suitability of alternative equipment or articles or materials shall be upon the Contractor, and he shall furnish, at his own expense, all information necessary or related thereto as required by the Town Engineer. The Town Engineer shall be the sole judge as to the comparative quality and suitability of alternative equipment or articles or materials and his decision shall be final.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

All requests for substitution shall be submitted seven (7) days in advance of bid opening to permit, if the request is approved, an addendum to be issued to all bidders.

**V-F. PROTECTION OF WORK:** The Contractor shall continuously maintain adequate protection of all his work from damage, and the Town will not be held responsible for the care or protection of any material, equipment or parts of work, except as expressly provided for in the specifications.

**V-G. CONFLICT OF TERMS:** The notice to bidders, proposal, plans, specifications and General Provisions are essential parts of the contract for a given project. These documents, together with the necessary bonds and bidder's guarantee, constitute the contract as defined herein, and a requirement included in one document shall be as binding as though included in all, as they are intended to be cooperative and to provide a description of the work to be done. Should there be any conflict or discrepancy between terms used, then the specifications shall govern over plans, and change orders and supplemental agreements shall govern over any other contract document.

**V-H. INTERPRETATION OF PLANS AND SPECIFICATIONS:** Should it appear that the work to be done, or any matter relative thereto, is not sufficiently detailed or explained on the plans or in the specifications, the Contractor shall request the Town Engineer for such further explanation as may be necessary, and shall conform to such explanation or interpretation as part of the contract, so far as may be consistent with the intent of the original specifications. In the event of doubt of questions relative to the true meaning of the specifications, reference shall be made to the Town Council, whose decision thereon shall be final.

**V-I. ALTERATIONS, INCREASES AND DECREASES OF WORK TO BE DONE:** The Town reserves the right to increase or decrease the quantity of any item or portion of the work described on the plans, the specifications or the proposal form, to revise the list of streets and locations of the work to be performed, or to omit portions of the work so described, as may be deemed necessary or expedient by the Town Engineer and the Contractor shall agree not to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any kind of work to be done.

By mutual consent of the parties signatory to the contract, alterations, modifications or deviations from the type of work may be described on the plans, specifications or on the proposal form may be made without in any way making the contract void. The price to be paid by the Town to the Contractor for such altered or modified work shall be agreed upon in writing, endorsed upon the original contract and signed by the proper parties to said contract.

Whenever, during the progress of the work, such changes or modifications are deemed necessary by the Town Engineer and agreed upon, as aforesaid, said deviations shall be considered and treated as though originally contracted for, and shall be subject to all the terms, conditions and provisions of the original contract.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**V-J. EXTRA WORK:** New and unforeseen work will be classed as extra work only when said work is not covered and cannot be paid for under any of the various items or combination of items for which a bid price appears on the proposal form. The Contractor shall not do any extra work except upon written order from the Town Engineer. Compensation for such extra work shall be previously agreed upon in writing between the Contractor and the Town Engineer.

**V-K. LINES AND GRADES:** Except when, as per orders from the Town Engineer, minor changes in the work are to be made by the Contractor, all work shall, during its progress and upon completion, conform to the lines, grades and elevations shown on the plans. All distances and measurements are given thereon and will be made in a horizontal plane. Three (3) consecutive points shown on the same rate of slope must be used in common in order to detect any variation from a straight line, and in case any such discrepancy exists, it must be reported to the Town Engineer. Failure to make this report shall make the Contractor responsible for any error in the finished work.

**V-L. PUBLIC UTILITIES:**

(1) All of the existing utility facilities except those to be relocated as shown on the plans will remain in place and the contractor will be required to work around said facilities. In case it should be necessary to remove the property of a public utility or franchise, such owner will, upon proper application by the Contractor, be notified by the Town Engineer to move such property within a reasonable time, and the Contractor shall not interfere with said property until after the expiration of the time specified. The right is reserved to the owners of public utilities or franchises to enter upon the streets for the purpose of making repairs or changes in their property which may be necessary as a result of the work. Employees and agents of the Town shall likewise have the privilege of entering upon the street for the purpose of making any necessary repairs or replacements.

(2) The Contractor shall employ and use only qualified persons, as hereinafter defined, to work in proximity to Southern California Edison secondary, primary and transition facilities. The term "qualified person" shall mean one, who by reason of experience or instruction, is familiar with the operation to be formed and the hazards involved, as more specifically defined in Section 2700 of Title 8 of the California Administrative Code. The Contractor shall take such steps as are necessary to assure compliance by any subcontractors.

**V-M. REMOVAL OF INTERFERING OBSTRUCTIONS:** The Contractor shall remove and dispose of all debris, abandoned structures, tree roots and obstructions of any character met during the process of excavation, it being understood that the cost of said removals are made a part of the unit price bid by the Contractor under the item for excavation or removal of existing work.

**V-N. PROCEDURE IN CASE OF DAMAGE TO PUBLIC PROPERTY:** Any portions of curb, gutter, sidewalk or any other Town improvement damaged by the Contractor during the course of construction shall be replaced by the Contractor at his own cost, free of charges to the Town. The cost of additional replacement of curb, gutter or

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

sidewalk in excess of the estimated quantities shown in the proposal form and specifications, and found necessary during the process of construction, (but not due to damage resulting from carelessness on the part of the Contractor during his operation), shall be paid to the Contractor at the unit prices submitted in his bid.

**V-O. AVOIDANCE OF DUST NUISANCE:** During the process of breaking, excavating and removing any material from the site of the project and until completion of the work, the Contractor shall take every precaution to avoid the nuisance of unnecessary dust by using any measures advocated by the Town Engineer.

**V-P. REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK:** It is the intent of the specifications that only first-class work, materials and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the Town Engineer, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the Town Engineer made under the provisions of this paragraph, the Town Engineer shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any moneys due or to become due the Contractor. If the work is found to be in compliance with these specifications, the Town Engineer will furnish the Contractor with a certificate to that effect.

**V-Q. SUPERVISION:** All manufactured products, materials and appliances used and installed and all details of the work shall at all times be subject to the supervision, test and approval of the Town Engineer or his authorized representatives. The Town Engineer or his authorized representatives shall have access to the work at all times during construction, and shall be furnished with every reasonable facility for securing full knowledge with regard to the progress, workmanship and character of the materials used or employed in the work.

Whenever the Contractor varies the period during which work is carried on each day, he shall give adequate notice to the Town Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer or the Engineer's agent will be subject to rejection. The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill the contract as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have previously been accepted or estimated for payment.

The Contractor shall prosecute work on any State highway or with any railroad right-of-way only in the presence of an inspector representing the State Division of Highways or the railroad company, and any work done in the absence of such inspectors will be subject to rejection. The Contractor shall make the appropriate notification according to the instructions given on the State Encroachment Permit or railroad permit for all inspections, and shall post all bonds and certificates required by the permit. The permit

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

shall be acquired by the Contractor at the Contractor's expense. The Contractor shall pay for all testing and inspections required by a State Encroachment Permit or railroad permit.

**V-R. QUALITY OF MATERIAL:** Materials shall be new, and of specified kind and quality, and fully equal to samples when samples are required. When the quality or kind of material or articles shown required under the contract is not particularly specified, the Contractor shall estimate that the Town will require articles and materials representing the best of their class or kind or at least equal to the class or quality of similar articles or materials when specified. Materials shall be furnished in such quantities and kinds and at such times as to ensure uninterrupted progress for the work. They shall be stored properly and protected as required. The Contractor shall be entirely responsible for damage or loss by weather or any other cause.

**V-S. DEFECTIVE MATERIALS:** All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials shall be removed immediately from the site of the work unless otherwise permitted by the Town Engineer. Upon failure on the part of the Contractor to comply with any order by the Town Engineer made under the provisions of this article, the Engineer shall have the authority to remove and replace defective material and to deduct the cost of removal and replacement from any moneys due or to become due to the Contractor.

**V-T. SOUND AND VIBRATION CONTROL REQUIREMENTS:** The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances. No internal combustion engine shall operate on the project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including, but not limited to truck, transit mixers or transit equipment that may or may not be owned by the Contractor.

**V-U. AIR POLLUTION CONTROL:** Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, during compound, solvent or liquid asphalt shall be labeled to indicate the contents, fully complying with the applicable material requirements.

**V-V. FINAL CLEANING UP:** Upon completion of the project and before making application to the Town Engineer for acceptance of the work, the Contractor shall clean all the streets and ground occupied by him in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat and presentable condition.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Sub - Section 2. Specific Project Provisions**

**A. THE REQUIREMENTS:** All work embraced herein shall be accomplished in accordance with the applicable portions of the Standard Specifications, except as modified by these Special Provisions and the Project Plans.

In addition to the above, the Contractor shall comply with the requirements of the following:

- (a) Notice Inviting Sealed Bids
- (b) Instructions to Bidders
- (c) Proposal
- (d) Bid Bond
- (e) Information Required of Bidders
- (f) Agreement
- (g) Faithful Performance Bond
- (h) Labor and Material Bond

**B. DEFINITION OF TERMS:** Wherever in the Standard Specifications terms are used, they shall be understood to mean and refer to the following:

Agency & Owner - Town of Apple Valley

Board - Town Council, Town of Apple Valley

Director - The executive officer of the Department of Parks and Recreation of the Town of Apple Valley

Department - The Department of Parks and Recreation of the Town of Apple Valley

Engineer - The Town Engineer, acting either directly or through the properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Notice to contractors - Notice Inviting Sealed Bids

**C. PROJECT PLANS:** The location of the work, its general nature, extent, form and detail of the various features are listed as a part of these specifications.

**D. SCOPE OF WORK:** Provide necessary labor, equipment and materials to install Town furnished shade structures at James Woody Park, in accordance with the project plans, standard specifications, special provisions, and as directed by the Town Engineer.

**E. NOTICE TO PROCEED:** Upon award of this contract and signing the contract documents, the Town shall issue the Contractor a Notice to Proceed.

The work on this project shall commence within **10 calendar days** of the Notice to Proceed and be completed within **30 working days from the Notice to Proceed.**

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

Working days will be counted from the date of the Notice to Proceed. Working days are defined as any day that Town offices are open for business.

The Town will not authorize any work to be done under this specifications before the contract agreement has been fully executed; and any work that is done by the contractor in advance of such time shall be considered as being done at his own risk and responsibility, and as a consequence will be subject to rejection by not having been done in the presence of an Engineer or Inspector as provided in Section 2-11 of the Standard Specifications.

In the event that the Engineer shall be of the opinion that the work is being inadequately or improperly executed in any respect, he/she may demand that the Contractor improve or change the execution of the work in such manner as to assure proper and timely completion.

**F. UTILITIES:** The Contractor shall exercise due care to ensure that utility facilities are not damaged during his operations. When in doubt, the Contractor shall contact the utility concerned before proceeding further.

**G. NOTIFICATION:** The Contractor shall give written and reasonable notice to occupants or owners of property adjacent to the construction site at least 48 hours and not more than two weeks prior to the beginning of construction in their respective areas. The notification shall include the day, date and time of street closures, parking and traffic access information and requirements, and precautionary information regarding the work to be done. A copy of all notifications shall be submitted to the Town Engineer for approval.

At least four working days and not more than ten working days in advance of street closures, all emergency services, public transportation services, garbage collections services, and school bus services shall be notified by the Contractor in writing of the locations, time and date of the closure. In case of schedule changes, the emergency services, etc., shall be notified by telephone at least two days in advance of the street closure.

**H. ACCESS TO DRIVEWAYS:** In the case of work which may interfere with the use by residents or businesses of their driveways, suitable provisions shall be made by the Contractor at such time as the exigencies of construction may demand a temporary blocking of said driveways. Efforts shall be made by the Contractor to minimize the duration of said blocking and to notify the residents of this need well in advance. The Contractor shall provide access to each residential or commercial establishment each evening.

**I. STREET CLOSURES:** No closure of any street shall be allowed unless prior written permission is obtained from the Town Engineer. If permission to close a street is granted then the Contractor is required to notify in writing at least four (4) and not more than ten (10) working days in advance all emergency services, public transportation

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

services, garbage collection services, and school bus services of the location, time and date of the closure.

**J. CONFERENCE:** The Contractor shall arrange a pre-construction meeting with the Town Engineer which shall be held a minimum of five (5) working days prior to commencement of any work. The Contractor shall have his equipment available for inspection by the Town Engineer at the time of the pre-construction meeting. The Contractor shall have the work schedule and the traffic control plan ready for review and discussion at this conference

**K. PUBLIC CONVENIENCE AND SAFETY:**

(b) Attention is directed to Section 7-10 of the Standard Specifications and the "Manual of Warning Signs, Lights and Devices for Use in Performing Work upon Highways", published by the California Department of Transportation.

Full compensation for conforming to the requirements of Section 7-10 of the Standard Specifications, the above referenced CALTRANS Manual and these Special Provisions not otherwise provided for, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

(b) **WARNING AND PROTECTION DEVICES:** The Contractor will be responsible for providing, placing and maintaining approved signs, barricades, pedestals, flashers, delineators, fences, barriers and flagmen where needed, and other necessary facilities in the vicinity of the construction area and where any dangerous conditions may be encountered as a result thereof, for the protection of the motoring public. The Contractor will not be allowed to proceed with the work until such time that a sufficient number of these protection devices have been delivered to the project site.

Where parked vehicles are likely to interfere with the proposed work, the Contractor will supply and post at no less than 200-foot intervals on each side of the street "Temporary No Parking" signs at least twenty-four (24) hours, and not more than seventy-two (72) hours before the start of construction and to report the time of posting to the Town's Police Department for the purpose of establishing "Tow Away" provisions. The Contractor shall remove the temporary signs upon the completion of the work.

Should the Contractor appear neglectful or negligent in furnishing warning and protection devices as outlined above, the Engineer may direct attention to the existence of a hazard and the necessity of additional or different measures which shall be furnished and installed by the Contractor at his own expense, free of any cost to the Town. Should the Contractor refuse or fail to act in a timely manner to correct a hazardous condition, the Engineer shall may direct Town forces to provide the necessary protective and warning devices as deemed appropriate by the Engineer.

The cost accrued by the Town in connection therewith will be deducted from the Contractor's contract payment. Any action or inaction on the part of the Town in directing attention to the inadequacy of warning and protective measures or in providing additional protective and warning devices shall not relieve the Contractor from



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

responsibility for public safety or abrogate his obligation to furnish and pay for these devices.

The Contractor shall submit his work schedule and traffic control plans to the Town Engineer for approval at the pre-construction conference. This schedule shall allow residents, on the streets to be improved, ample "on street" parking within an 800-foot distance from their homes.

**L. SANITARY CONVENIENCE:** Necessary sanitary facilities for the use of workman on the job shall be provided and maintained in an approved manner by the Contractor, properly secluded from public observation and in compliance with health ordinances and laws, and their use shall be strictly enforced by the Contractor.

**M. CONSTRUCTION YARD:** It shall be the Contractor's responsibility to locate any storage sites for materials and equipment needed and such sites either located on public or private property must be approved in advance by the Town Engineer.

When storage sites are to be on located upon private property, the Contractor shall be required to submit to the Town Engineer, written approval from the record owner authorizing the use of the property by the Contractor.

**N. CONSTRUCTION STAKING:** The Contractor shall be required to provide any and all necessary construction survey staking required to construct the project. Full compensation for performing any needed construction survey staking not otherwise provided for, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore. Horizontal controls if not shown on project drawings will be provided by Town prior to construction.

**O. EXISTING SURVEYING MONUMENTS:** The Contractor's Licensed Land Surveyor or Civil Engineer shall reference and protect all centerline monuments within the project limits. The survey monuments shall not be disturbed unless required by the construction of the proposed improvements. The Contractor shall coordinate the removal of any survey monuments with the Town Engineer. The re-establishing of the survey monuments once the construction has been completed, will be the responsibility of the Contractor. All documentation with regard to referencing all affected monuments shall be submitted to the Town prior to commencement of construction and all documentation with regard to the re-establishing of all monuments shall be submitted to the Town prior to final approval of the project.

Measurement and Payment: Full compensation for performing any needed construction survey staking required by the construction of the proposed improvement, referencing, protecting and reestablishing all monuments, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

**P. CONSTRUCTION MATERIALS AND METHODS/SPECIAL PROVISIONS:**

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

General Requirements:

- (a) Utilities: – The Contractor shall contact the affected utility companies for information regarding identification, location, and depth of underground utilities.
- (b) Preservation of Property: – Existing improvements in areas adjoining the property whereon demolition and removal is being performed shall be protected from injury or damage resulting from operations of the Contractor and the Contractor shall be responsible for such damage. In like manner any building, structure, tree, shrub, or other item designated for preservation on the property where demolition and removal is being performed shall be similarly protected and preserved.
- (c) Dust Control: – The Contractor shall provide such dust laying equipment and methods as may be required to protect adjacent property from annoyance or damage from dust caused by his operations, and failure to control such dust shall be cause for the Engineer to stop the work until said dust is controlled, and the Contractor shall have no recourse to collect from the Town for any loss of time or expense sustained by him due to such suspension of work.
- (d) Selected Materials: – Existing materials excavated within the project limits that meet the specifications for trench backfill, topsoil, or other selected materials may be used to fulfill all or a portion of the requirements for such materials. No additional compensation will be allowed for excavation, stockpiling, overhaul, or placing selected materials encountered in the excavation.
- (e) Surplus Materials: – The Contractor shall furnish written consent from the owner of the property where it is intended to dispose of the surplus material. Surplus excavation shall become the property of the Contractor.
- (f) Furnishing and Applying Water: – Furnishing and applying water shall be considered as included in the bid price paid for the various contract items of work requiring such water and no additional compensation will be made therefore.
- (g) Compaction Testing: – The expense of the initial testing shall be borne by the Town. The expense of any re-testing required by the Town, if the initial compaction does not meet the required specifications shall be borne by the Contractor. All other material testing shall be borne by the Contractor.
- (h) Construction Hours: – The Contractor shall be allowed to work from 7:00 am to 6:00 pm. Weekend work will not generally be allowed.
- (i) Conflict with Utility Relocation Work: – Contractor is responsible for contacting the individual utility companies to see how this work may impact the Contractor's anticipated construction activities. No additional compensation shall be granted to the contractor for delays and/or other changes in the construction activities which are required as a result of the utility relocation work.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Bid Item No. 1 – 4” Thick Concrete Slab:**

(a) General – All work shall conform to Sections 300, 301, and 303 of the Standard Specifications. The work shall consist of preparation of new subgrade by scarifying to a depth of 12” and re-compacting to 95% relative compaction, set and remove forms, placing reinforcing steel, placing concrete, installing joints, curing, finishing, and all other work necessary to complete the concrete slab.

(b) Material – Concrete class shall be 560-C-3250 and shall conform to Section 300 of the Standard Specifications.

(c) Measurement and Payment – The cost of all work described above and also including all costs of materials, labor, tools, equipment, and incidentals, and for doing all the work involved, complete in place, shall be included in the contract unit price bid for Bid Item No. 1 – 4” Thick Concrete Slab, and no additional compensation will be allowed.

**Bid Item No. 2 – Install Town Furnished HXE 28 - Multi-Rib Shade Structures:**

(a) General – All work shall conform to Sections 300, 301, and 303 of the Standard Specifications, and the manufacturer’s specifications and recommendations. The work shall consist of excavation, construction of footings, backfill, compaction, coordination with Town for shade structure delivery (to be delivered by Town or by manufacturer to job site), provide labor, tools, equipment, materials, and all other work necessary to install Town furnished HXE 28 - Multi-Rib shade structures, as shown on the project plans.

(b) Measurement and Payment – The cost of all work described above and also including all costs of materials, labor, tools, equipment, and incidentals, and for doing all the work involved, complete in place, shall be included in the contract unit price bid for Bid Item No. 4 – Install Town Furnished HXE 28 - Multi-Rib Shade Structures, and no additional compensation will be allowed.

## **Section D**

# **PROPOSAL**

To the Honorable Mayor and the Town Council of the Town of Apple Valley:

\_\_\_\_\_, the Bidder, represented by the undersigned, declares that:

- (1) This proposal is made without collusion with any other person, firm or corporation, and that the only persons or parties interested as principals are those named herein;
- (2) Bidder has carefully examined the project plans, specifications, instructions to bidders, proposal, notice to contractors and all other information furnished therefore and the site of the proposed work; and
- (3) Bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and quantities of work to be performed and materials to be furnished.

Furthermore, Bidder agrees that submission of this proposal shall be conclusive evidence that such examination and investigation have been made and agrees, in the event this contract be awarded to Bidder, to enter into a contract with the Town Council of the Town of Apple Valley, to perform said proposed work in accordance with the plans, if any, and the terms of the specifications, in the time and manner therein prescribed, and to furnish or provide all materials, labor, tools, equipment, apparatus and other means necessary so to do, except such thereof as may otherwise be furnished or provided under the terms of said specifications, for the following stated unit prices or lump sum price as submitted on the Schedule attached hereto.

Accompanying this proposal is -- (indicate which of the following) \_\_\_ cash; \_\_\_ cashiers check in favor of the Town of Apple Valley; \_\_\_ certified check in favor of the Town of Apple Valley; or \_\_\_ bid bond in the form furnished by the Town -- in an amount equal to at least ten percent (10%) of the total aggregate bid price hereof based on the quantities shown and the unit prices quoted. The Bidder understands that said security shall be held by the Town until the agreement for doing the work has been entered into, that said security shall be forfeited to the Town as liquidated damages should the undersigned fail to enter into a contract and furnish the required bonds and insurance within the time specified in the Contract Documents, if awarded the contract, and the undersigned agrees that in the event of such failure, the actual amount of damages to the Town would be impractical and extremely difficult to determine.

The undersigned further agrees that should he or she be awarded the contract on the basis hereof and thereafter, defaults in executing the required contract, with necessary bonds and documents, within fifteen (15) calendar days after having received notice that the contract has been awarded and is ready for signature, the proceeds of the security accompanying his bid shall become the property of the Town of Apple Valley and this proposal and the acceptance thereof may be considered null and void.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

Licensed in accordance with an act providing for the registration of contractors,  
California Contractor's License No. \_\_\_\_\_, Class \_\_\_\_\_.

Signature(s) of Bidder\_\_\_\_\_

If an individual, so state. If a firm or co-partnership, state the firm name and give the names of all individual co-partners composing the firm. If a corporation, state legal name of corporation and the names of president, secretary, treasurer, and manager thereof. **Two notarized officer's signatures and the corporate seal are required for corporations. One signature must be by either the President or Vice-President and the second signature must be by either the secretary or assistant secretary.**

By: \_\_\_\_\_ "corporate seal"

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

By: \_\_\_\_\_

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

Legal Business Name: \_\_\_\_\_

Address\_\_\_\_\_

Telephone\_\_\_\_\_

Proposals which do not show the number and date of the Bidder's License under the provisions of Chapter 9 of Division 3 of the Business & Professional Code may be rejected.

To be submitted with each bid:

Project Identification No. **2014-PR02** to contract for **Installation of Shade Structures, James Woody Park.**

Bid Date\_\_\_\_\_

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

## BID SHEET

To the Honorable Mayor and Town Council of the Town of Apple Valley:  
 In compliance with the Notice Inviting Sealed Bids, the undersigned hereby agrees to enter into a contract to furnish all labor, materials, equipment and supplies for **INSTALLATION OF SHADE STRUCTURES, JAMES WOODY PARK** in accordance with the specifications and plans in the Contract Documents which are on file in the office of the Parks and Recreation of the Town of Apple Valley to the satisfaction and under the direction of the Parks and Recreation Manager at the following prices:

Item	Description	Qty.	Unit	Unit Price	Extended Amount
1	4" Thick, 34' by 30' Concrete Slab with Wire Mesh (total 2 locations) (See page C-19 for description)	2,040	SF	\$ _____	\$ _____
2	Install Town Furnished HXE 28 - Multi-Rib Shade Structures and footings (total 2 locations) (See page C-19 for description)	2	EA	\$ _____	\$ _____

**TOTAL BID FOR ITEMS 1 – 2:**                   \$ \_\_\_\_\_  
(Figures)

**TOTAL BID FOR ITEMS 1 – 2:**                   \_\_\_\_\_   
(Words)

Bidder acknowledges receipt of the following Addendum:

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE:** A bid is required for this entire work, the estimated quantities set forth in this Bid Schedule are solely for the purpose of comparing bids, and final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. The unit and/or lump sum prices bid shall include all appurtenant expenses, taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amounts, and words shall govern over figures.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

Dated: \_\_\_\_\_

FIRM NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

Bidder

## **NONCOLLUSION AFFIDAVIT**

(Title 23 United States Code Section 112 and Contract Code Section 7106)

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the Bidder declares that the bid is not made in the interest of or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure, any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Dated: \_\_\_\_\_

FIRM NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

Bidder





## **DEBARMENT AND SUSPENSION CERTIFICATION**

### TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- has not currently under suspension, debarment, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.

The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

**Section E**  
**BIDDER'S BOND TO ACCOMPANY PROPOSAL**

**TOWN OF APPLE VALLEY**  
**STATE OF CALIFORNIA**

KNOWN ALL PERSONS BY THESE PRESENTS:

That we, \_\_\_\_\_ as Principal,  
and \_\_\_\_\_ as Surety, are  
held and firmly bound unto the Town of Apple Valley in the sum of  
\_\_\_\_\_ (\$\_\_\_\_\_) dollars, to be paid to  
the said Town or its certain attorneys, its successors and assigns; for the payment of  
which sum, well and truly made, we bind ourselves, our heirs, executors and  
administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH

That if the certain proposal of the above bounded  
\_\_\_\_\_ to the Town of Apple Valley,  
dated \_\_\_\_\_, is accepted by the Town of Apple Valley, and if the  
above bounded \_\_\_\_\_ his heirs,  
executors, administrators, successors and assigns, shall duly enter into and execute a  
contract for such construction, and shall execute and deliver the two bonds described  
within fifteen (15) calendar days, from the date of the mailing of a notice to the above  
bounden \_\_\_\_\_ by and from the  
said Town of Apple Valley that said contract is ready for execution, then this obligation  
shall become null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, we hereunto set our hands and seals this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
Title:

"corporate seal"

By \_\_\_\_\_  
Title:

\_\_\_\_\_  
Surety

"corporate seal"

By \_\_\_\_\_  
Attorney-in-Fact

PLEASE ATTACH NOTARY ACKNOWLEDGMENT

## Section F

# INFORMATION REQUIRED OF BIDDERS

The Bidder is required to supply the following information. Additional sheets may be attached if necessary.

1. Name: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Telephone: (\_\_\_\_)\_\_\_\_\_
4. Type of firm - Individual, Partnership, or Corporation: \_\_\_\_\_
5. Corporation organized under the laws of the State of \_\_\_\_\_
6. Contractor's license no. and class: \_\_\_\_\_
7. List the names and addresses of all members of the firm or names and titles of all officers of the corporation:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

8. Number of years experience as a contractor in construction work \_\_\_\_\_

9. List at least three projects completed as of recent date:

Contract Amount	Class of Work	Date Completed	Name & Address of Owner

10. List the name of the person who inspected the site of the proposed work for your firm:

\_\_\_\_\_

11. NOTE: Upon request of the Town, the Bidder shall furnish evidence showing a notarized financial statement, financial data, construction experience, or other information.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Section G**  
**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the Town of Apple Valley, in the County of San Bernardino, State of California, by Town Council \_\_\_\_\_ action of \_\_\_\_\_, has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the \_\_\_\_\_ together with appurtenances thereto, and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

NOW, THEREFORE, we \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the Town of Apple Valley hereinafter called the "Contracting Town" in the penal sum of one hundred percent (100%) of the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH that, if the hereby bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in said Contract and any alteration thereof, made as therein provided all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

FURTHER, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract Documents or of the work to be performed hereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or modification of the Contract Documents or of work to be performed hereunder.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety herein named on the \_\_ day of \_\_\_\_\_, 20\_\_\_. The name and corporate seal of each corporate party being hereto affixed and these presents fully signed by its undersigned representative pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
Title:

"corporate seal"

By \_\_\_\_\_  
Title:

\_\_\_\_\_  
Surety

"corporate seal"

By \_\_\_\_\_  
Attorney-in-Fact

PLEASE ATTACH NOTARY ACKNOWLEDGMENT.

## **Section H**

# **PAYMENT BOND**

(BOND FOR LABOR AND MATERIAL)

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the Town of Apple Valley, in the County of San Bernardino, State of California, by Town Council action of \_\_\_\_\_, has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for CIVIC CENTER PARK AMPHITHEATER together with appurtenances thereto, and

WHEREAS, said Principal is required to furnish a bond in connection with said contract providing that if said Principal, or any of his or its subcontractors shall fail to pay for any materials, provisions, provender, fuel, or other supplies or equipment used in, upon, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth;

NOW, THEREFORE, we \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the Town of Apple Valley, hereinafter called the contracting Town, in the penal sum of one hundred percent (100%) of the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United State of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if said Principal, his or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, provender, rented or hired teams, implements, or machinery, or other supplies or equipment of any kind used in, upon, for or about the performance of the work contracted to be done, including, but not limited to, that part of water, gas, power, light, heat, oil, gasoline, or telephone service directly applicable to the contract, or for any work or labor thereon of any kind, or for any amounts due under the California Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of the employees of said Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work and labor, and provided that any person, so furnishing said supplies or equipment therefore shall have complied with the provisions of Chapter 7 of Title 15 of Part 4 of Division 3 of the California Civil Code, as amended, or any successor thereto, then said Surety shall pay the same in or to an amount not exceeding the amount herein above set forth and also shall pay in case suit is brought upon this bond, such reasonable attorney's fees as shall be fixed by the court.

The bond shall inure to the benefit of any and all persons, companies, and corporations named in California Civil Code Section 3181, as amended, or any successor thereto, so as to give a right of action to them or their assigns in any suit brought upon this bond.

FURTHER, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modifications of the Contract Documents or of the work to be

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

performed hereunder shall in any way affect its obligations of this bond and it does hereby waive notice of such change, extension of time, alteration, or modification of the Contract Documents or of work to be performed hereunder.

Notices, papers and other documents required by Chapter 2 of Title 14 of Part 2 of Code of Civil Procedure, or by any other law, regulation, or requirement of the Contract may be served upon Principal at this address:

and upon Surety at this address:

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety herein named, under penalty of perjury, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
Title:

"corporate seal"

By \_\_\_\_\_  
Title:

\_\_\_\_\_  
Surety

"corporate seal"

By \_\_\_\_\_  
Attorney-in-Fact

PLEASE ATTACH NOTARY ACKNOWLEDGMENT

**Section I**  
**WORKERS' COMPENSATION**  
**CERTIFICATE OF INSURANCE**

**WHEREAS**, the Town of Apple Valley has required certain insurance to be provided by

**NOW THEREFORE**, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time.

1. This certificate is issued to: Town of Apple Valley, Town Hall, 14955 Dale Evans Parkway, Apple Valley, California.
2. The insureds under such policy or policies are: \_\_\_\_\_  
\_\_\_\_\_

3. Worker's Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds, as follows:

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Said policy or policies shall not be canceled, nor shall there be any reduction in coverage or limits of liability, unless and until thirty days' written notice thereof has been served upon the Town Clerk of the Town of Apple Valley.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Its Authorized Representative



**Section J**  
**INSURANCE REQUIREMENTS FOR THE**  
**TOWN OF APPLE VALLEY**  
***PUBLIC WORKS CONTRACT***

The Contractor shall at all times during the terms of the contract carry, maintain, and keep in full force and effect, a policy or policies of comprehensive Public Liability Insurance with an insurance company acceptable to, and approved by, the Town Engineer and Town Attorney, with minimum limits of One Million Dollars (\$1,000,000.00), combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the Contractor, together with an endorsement in substantially the form set forth below.

**ENDORSEMENT**

It is hereby understood and agreed that the Town of Apple Valley, its Town Council and each member thereof, and every officer, agent (including but not limited to employees of Charles Abbott Associates, Inc. and all other town consultants) and employees of town shall be named as jointly and severally insured as respects any and all claims arising out of the following project:

**Installation of Shade Structures, James Woody Park**

It is further agreed that the following indemnity agreement between the Town of Apple Valley and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend (with attorneys of Town's choice) the Town, its Town Council and each member thereof and every officer, agent (including but not limited by this reference to employees of Charles Abbott Associates, Inc.) and employee of the Town from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all cost and expenses of litigation brought against the Town, its Town Council and each member thereof and any officer, agent (including but not limited by this reference to employees of Charles Abbott Associates, Inc.) or employee of the Town which results directly or indirectly from the wrongful or negligent actions of the Contractor or Contractor's officers, employees, agents or others employed by the Contractor while engaged by the Contractor in the performance of this agreement.

It is further agreed that the inclusion of more than one insured shall not operate to increase the limit of the company's liability and that insurers waive any right of contribution with insurance which may be available to the Town of Apple Valley, Contractor's insurance being primary and not contributing with any other insurance available to the Town and other above identified insureds.

In the event of cancellation or material change in the above coverage the company will give thirty (30) days written notice of cancellation or material change to the certificate holder (Town).

## **Section K**

### **INSTRUCTIONS FOR EXECUTION OF INSTRUMENTS**

THIS IS INSTRUCTION ONLY - IT IS NOT TO BE SIGNED OR USED IN CONJUNCTION WITH THE AGREEMENT OR ANY OTHER FORMS THAT MUST BE TURNED INTO THE TOWN - IT IS SIMPLY A FORMAT TO USE WHEN FILLING OUT DOCUMENTS.

1. By an Individual. The individual must sign the instrument, and if he is doing business under a fictitious name, the fictitious name must be set forth. The signature must be acknowledged before a Notary Public, using the proper form of acknowledgment.
2. By a Partnership. The name of the partnership must be set forth followed by the signatures of less than all of the partners will be acceptable only if submitted with evidence of authority to act on behalf of the partnership. The signatures must be acknowledged before a Notary Public, using the proper form of acknowledgment.
3. By a Corporation. The name of the corporation must be set forth, followed by the signatures of the President or Vice President and Secretary or Assistant Secretary. The signatures must be acknowledged before a Notary Public, using the proper form of acknowledgement.
4. By a Surety. The name of the surety must be set forth, followed by an authorized signature. The signatures must be acknowledged before a Notary Public, using the proper form of acknowledgment.

## **Section L** **CONTRACT**

TOWN OF APPLE VALLEY

THIS AGREEMENT is made and entered into in accordance with action of the Town Council on the \_\_\_ th day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the Town of Apple Valley, hereinafter referred to as "Town," and \_\_\_\_\_ hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, Contractor and Contractor's Surety are providing the bonds attached hereto and incorporated by this reference, and

WHEREAS, Town desires to contract with Contractor to perform the services detailed in this contract, including the Proposal, and

WHEREAS, Contractor has represented that it is fully qualified to assume and discharge such responsibility;

NOW, THEREFORE, the parties hereto do agree as follows:

Scope of Services. Town hereby employs Contractor to perform the work and provide the services and materials as described in the Invitation for Bids, attached hereto and incorporated herein by this reference, including miscellaneous appurtenant work. Such work shall be performed in a good and workmanlike manner, under the terms as stated herein and in the Invitation for Bids, and the Proposal, and in accordance with the Standard Specifications for Public Works Construction, Latest Edition, published by Building News, Inc. In the event of any conflict between the terms of this agreement and any of the above-referenced documents, the terms of this agreement shall be controlling.

1. Compensation. In consideration of the services rendered hereunder, Contractor shall be paid according to the prices as submitted on the Bid Sheet of the Proposal, attached hereto, and in accordance with the Special Provisions.

2. Hold Harmless; Insurance. It is specifically understood and agreed by all parties hereto that Contractor is, for the purposes of this Agreement, an independent contractor and not an employee of the Town. Accordingly, Contractor shall not be deemed the Town's employee for any purpose whatsoever. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever for or against the Town and shall hold harmless, indemnify and defend with the attorneys of the Town's choice, the Town of Apple Valley its officers, employees, agents and representatives, from and against any and all obligations, claims, liens, or causes of actions, arising out of or related to Contractor's services hereunder. Contractor shall file and maintain with the Town at all times during the term of this Agreement, a copy or certificate of general liability

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

insurance with an insurance company acceptable to, and approved by, the Town Engineer and Town Attorney, with minimum limits of One Million Dollars (\$1,000,000.00) combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the Contractor. Such insurance shall not be canceled without thirty (30) days' prior written notice to the Town, shall name the Town and its officers and employees as additional insureds, shall include all automobiles utilized by the Contractor's personnel in the performance of this Agreement, and shall be primary and not contributing with other insurance available to the Town.

3. Assignment. This agreement may not be assigned by Contractor, in whole or in part, without the prior written consent of the Town.

4. Termination. This Agreement may be canceled by the Town at any time without penalty upon thirty (30) days' written notice. In the event of termination without fault of Contractor, the Town shall pay the Contractor for all services rendered prior to date of termination, and such payment shall be in full satisfaction of all services rendered hereunder.

5. Worker's Compensation Insurance. In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 5 (commencing with Section 1860) and Division 4, Part 1, Chapter 4 (commencing with Section 3700) of the Labor Code of the State of California, the Contractor is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Workers Compensation Insurance.

6. The undersigned Contractor is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this contract.

7. General Rate of Per Diem Wages. Pursuant to the Labor Code of the State of California, the Director of Industrial Relations has determined the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes applicable to the work to be done. This rate and scale are on file with the Town Engineer and copies will be made available to any interested party on request. The Contractor to whom the contract is awarded and the subcontractors under him must pay not less than these rates for this area to all workers employed in the execution of this contract.

8. Retention. In accordance with Part 5 (Section 2230), Division 2 of the Public Contract Code, a contractor may substitute securities for retention moneys withheld by a public agency to ensure performance under this contract. At the request and expense of the contractor, eligible securities equivalent to the amount withheld shall be deposited with the Town of Apple Valley, or with a state or federally chartered bank as escrow agent, who shall then pay such retained moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

9. Suit; Recovery of Attorney Fees & Costs. Should either party bring any action to protect or enforce its rights hereunder, the prevailing party in such action shall be entitled to recover, in addition to all other relief, its reasonable attorney fees and court costs.
10. Town Approval. All labor, materials, tools, equipment and services shall be furnished and work performed and completed under the direction and supervision and subject to the approval of the Town or its authorized representatives.
11. Gratuities. Contractor warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities or promises to the Town's employees, agents, or representatives with a view toward securing this Contract or securing favorable treatment with respect thereto.
12. Conflict of Interest. Contractor warrants that he is and will continue to be in compliance with all applicable conflict of interest laws.
13. Contractor's Affidavit. After the completion of the work contemplated by this Contract, Contractor shall file with the Town Manager his affidavit stating that all workmen and persons employed, all firms supplying materials, and all subcontractors upon the Job have been paid in full, and that there are no claims outstanding against the Project for either labor or materials, except certain items, if any, to be set forth in an affidavit covering disputed claims or items in connection with a Stop Notice which has been filed under the provisions of the laws of the State of California.
14. Notice to Town of Labor Disputes. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Town.
15. Books and Records. Contractor's books, records, and plans or such part thereof as may be engaged in the performance of this Contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Town.
16. Legal Day's Work. Eight (8) hours labor constitutes a legal day's work.
17. Inspection. The work shall be subject to inspection and testing by the Town and its authorized representatives.
18. Discrimination. Contractor represents that it has not, and agrees that it will not, discriminate in its employment practices on the basis of race, creed, religion, national origin, color, sex, age or handicap.
19. Governing Law. This Contract and any dispute arising hereunder shall be governed by the laws of the State of California.
20. Written notice. Any written notice required to be given in any part of the Contract Documents shall be performed by depositing the same in the U.S. Mail, postage

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

prepaid, directed to the address of the Contractor as set forth in the Contract Documents, and to the Town addressed as follows:

Town Manager  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, California 92307

21. Clayton/Cartwright Acts Assignment. The Contractor agrees to assign to the Town all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Profession Code), arising from purchases of goods, services, or materials pursuant to the Public Works Contract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

22. Town Claims. Town does not waive any claims against the Contractor by making any payment. The time limit for the Town to assert claims against the Contractor shall not be limited by the Contract Documents but shall be in accordance with the laws of the State of California.

23. This project is subject to Federal Labor Standards. A copy of Federal Labor Standards Provisions (HUD form 4010) is attached.

24. Affirmative Action and Contract Compliance. Contractor shall make every effort to ensure that all projects funded wholly or in part by CDBG/EDI funds shall provide equal employment and career advancement opportunities for small businesses, minorities, and women. In addition, Contractor shall make every effort to employ residents of the area and shall keep a record of the positions that have been created directly or as a result of this project.

25. Contractor shall comply with Executive Orders 11246 (Equal Employment Opportunity), 11375 (amending E.O. 11246), 11625 (Minority Business Enterprise), 12138 (National Women's Business Enterprise), 12432 (Minority Business Enterprise Development), 12250 (Leadership and Coordination of Nondiscrimination Laws), Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, applicable California Public Contracts Code, and other applicable federal, state, and local laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

- (A) Affirmative Action
  - (1) Approved Plan

The Contractor agrees that it shall be committed to carry out an Affirmative Action Plan/Program in keeping with the principles as provided in President's Executive Order 11246 (Equal Employment Opportunity) as amended by Executive Orders 11375, 11478, 12086, 12107 and 13279.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

(2) Small, Minority and Women-owned Business Enterprise

The Contractor will use its best efforts to afford small, minority, and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Contract. As used in this Contract, the term "minority group members" are those groups of United States citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act. Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

(3) Access to Records

The Contractor shall furnish and cause each of its Subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Town, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(4). EEO/AA Statement

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

26. Anti-Kick Back Provisions; Equal Employment Opportunity. All contracts for construction or repair using funds provided under this project shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. Contractor shall report all suspected or reported violations to the Town. All contracts in excess of ten thousand dollars (\$10,000.00) entered into by Contractor using funds provided under this Contract shall contain a provision requiring compliance with Equal Employment Opportunity provisions established by Executive Order Number 11246, as amended.

27. Contractor agrees to comply with all Federal Statutes relating to equal opportunity and non-discrimination including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) which prohibits discrimination on the basis of race, color or national origin;

2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1686), which prohibits discrimination on the basis of sex;

3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap;

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age.

28. Prevailing Wage Requirement. Any construction contracts awarded using funds provided under this project in excess of two thousand dollars (\$2,000.00) shall include a provision for compliance with the Davis-Bacon Act [40 U.S.C. 276(a) to 276(a)(7)] and as supplemented by Department of Labor Regulations (29 CFR). Under this act, Contractor shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. Contractor shall report all suspected or reported violations to the Town.

29. Compliance With Other Program Requirements. Contractor shall comply with all applicable federal laws and regulations set forth under the Subpart K of 24 CFR Part 570:

a. 24 CFR Part 570.601 – Affirmatively Furthering Fair Housing

Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR Part 1; Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act; and Executive Order 11063, as amended by Executive Order 12259 (3 CFR Part, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307)(Equal Opportunity in Housing), and implementing regulations in 24 CFR Part 107, also apply.

b. 24 CFR Part 570.602 - Section 109 of the Housing and Community Development Act

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of Section 109 are codified in 24 CFR Part 6.

c. 24 CFR Part 570.603 – Labor Standards

Section 110(a) of the Act contains labor standards that apply to non-volunteer labor financed in whole or in part with assistance received under the Act. In accordance with



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

Section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than eight (8) units. The regulations in 24 CFR Part 70 applies to the use of volunteers.

Contract Work Hours and Safety Standards Act. All Contractors and Subcontractors who are awarded contracts in excess of two thousand dollars (\$2,000.00) shall comply with the requirements of the Contract Work Hours Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (20 CFR Part 5) which requires that workers receive "overtime" compensation at a rate of one and one-half times their regular hourly wage after they have worked eight (8) hours in one day or forty (40) hours in one week.

d. 24 CFR Part 570.604 - Environmental Standards

For purposes of Section 104(g) of the Act, the regulations in 24 CFR Part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities.

e. 24 CFR Part 570.605 - National Flood Insurance Program

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR Parts 59 through 79 apply to funds provided under Part 570.

f. 24 CFR Part 570.606 - Displacement, Acquisition and Relocation Requirements

The general policy for minimizing displacement shall be implemented pursuant to this Part.

g. 24 CFR Part 570.607 - Employment and Contracting Opportunities

Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR Part 135.

Non-Discrimination. Contractor and its Subcontractors shall comply with provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258.0 et seq.) by not unlawfully discriminating against any employee or applicant for employment because of the following: race, religion, color, national origin, ancestry, disability, medical condition, marital status, age (over 40) or sex. During the performance of this Contract, the Contractor assures that no otherwise qualified person shall be excluded from

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this Contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

h. 24 CFR Part 570.608 – Lead Based Paint

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at Part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

Lead Based Paint. The Contractor agrees not to use lead-based paint in the Contractor's performance of this Contract. "Lead-based paint" means any paint containing more than six one-hundredths of one percent (1%) lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied.

i. 24 CFR Part 570.609 – Prohibition of Use of Debarred, Suspended or Ineligible Contractors or Subcontractors.

The requirements set forth in 24 CFR Part 5 applies to this project.

Contractor's License. Contractor hereby affirms that he/she is ready, willing and able to perform the work required and will maintain in full force and effect, throughout the term of this Contract hereof, a State Contractor's pursuant to the California Business and Professions Code and as required by the federal regulations stated above.

j. 24 CFR Part 570.610 – Uniform Administrative Requirements and Cost Principles

The Contractor, its agencies or instrumentalities, and Subcontractor shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR Part 84), A-122, A-133 (implemented at 24 CFR Part 45), and A-128 (implemented at 24 CFR Part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Parts 84 and 85 are set forth at 24 CFR Part 570.502.

k. 24 CFR Part 560.611 - Conflict of Interest.

In the procurement of supplies, equipment, construction, and services by contractors and by subcontractors, the conflict of interest provisions in 24 CFR Part 85.36 and 84.42, respectively, shall apply. No person who is an employee, agent, consultant, officer, or elected official or appointed official of Contractor, or of Subcontractor who exercise or have exercised any functions or responsibilities with respect to CDBG/EDI activities assisted under this contract, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG/EDI-assisted activity,

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG/EDI-assisted activity, or with respect to the proceeds of the CDBG/EDI-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Conflict of Interest. The Contractor shall be alert to organizational conflicts of interest or non-competitive practices among subcontractors which may restrict or eliminate competition or otherwise restrain trade. Contractor agrees to adhere to conflict of interest provisions set forth in 24 CFR Section 570.611 and to the procurement rules specified in 24 CFR, Part 85.36, in its expenditure of all funds received under this Contract.

I. 24 CFR Part 560.612 – Executive Order 12372

The Executive Order applies to Contractor project only where the proposed use fund is for the planning or construction (reconstruction or installation) of water or sewer facilities. Contractor is responsible to initiate the Executive Order Process for activities subject to review.

m. 24 CFR Part 560.613 – Eligibility Restrictions for Certain Resident Aliens

Certain newly legalized aliens, as described in 24 CFR Part 49, are restricted from applying for benefits under the project. The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of the regulation. Compliance can be accomplished by obtaining certification as provided in 24 CFR Part 49.20. However, pursuant to interim guidance on published in the Federal Register by the Department of Justice on November 17, 1997, nonprofit, charitable organizations are exempt from these provisions.

n. 24 CFR Part 560.614 – Compliance with the Architectural Barriers Act and Americans with Disabilities Act

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

(Signatures on the following page)

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

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

TOWN OF APPLE VALLEY

CONTRACTOR:

\_\_\_\_\_  
Mayor

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Title:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Title:

"Corporate seal"

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# **SPECIAL PROVISIONS**

***FOR***

# **COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS**

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Revised May 12, 2011

**EXHIBIT "A"**  
**SPECIAL PROVISIONS FOR CDBG CONTRACTS**

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**INTRODUCTION:** The following special conditions are items which must be contained in contracts that are fully or partially paid with CDBG funds. Some items such as bonding and insurance may also be included elsewhere in the contract documents. The Contractor must comply with those Town requirements as well as these Federal requirements.

The Contractor shall comply with all applicable special conditions for CDBG contracts as contained herein, and shall insert appropriate provisions in all sub-contracts covering work under this contract to insure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of sub-contractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

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

The Contractor must submit to the Town of Apple Valley CDBG Administrator within ten (10) days of bid opening, the names and addresses of the sub-contractors he/she proposes to utilize on the project in order for the CDBG Administrator to approve utilization of said sub-contractors. If other sub-contractors are proposed during the construction phase, their names and addresses are to be submitted to the CDBG Administrator prior to utilization for approval.

Complete language on the Federal labor laws is included in the attached HUD 4010, which is incorporated by reference.

*Statements shown in italics are instructions to the reader.*

**I. SPECIAL CONDITIONS FOR ALL CDBG CONTRACTS**

**A. "Section 3" Clause for Bid Documents**

Because this project receives direct Federal financial assistance, compliance with Section 3 of the Housing and Development Act of 1968 and the regulation implementing that Section is required. The Contractor understands that this requires the project to make training, employment and contracting opportunities available, to the greatest extent feasible, to lower-income Town residents and businesses.

**B. Remedies for Violation or Breach of Contract Terms**

All claims, disputes and other matters in question between the parties to this agreement, arising out of or relating to this agreement or the breach thereof, shall be resolved as provided by California law. Venue shall be in the Town of Apple Valley, California. Failure to timely comply with the contract without approval from the Town Council shall be deemed a breach of this agreement and the expenses and costs incurred by the Town shall be the burden of the Contractor. Disputes regarding the interpretation of this contract shall be resolved in favor of the Town.

**C. Patent and Copyrights**

The U.S. Department of Housing and Urban Development and the Town of Apple Valley, retain patent rights and copyrights on any project which involves research, developmental, experimental, or demonstration work.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**D. Adherence to State Energy Conservation Plan**

The successful bidder shall recognize and adhere to mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

**E. Access to Records**

*For all contracts other than those awarded under small purchase procedures:*

Town of Apple Valley, the consultant operating on behalf of the Town of Apple Valley, the State of California, the U.S. Department of HUD, the Comptroller General of the United States, or any of their authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract, for the purpose of performing audit or project monitoring, and such records shall be subject to examination, copying, excerpting or transcribing.

**F. Contract Work Hours and Safety Standards**

*Applies to any contracts in excess of \$2,000.00 which may involve the employment of mechanics or laborers. (These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.)*

The Contractor shall comply with Sections 103 and 107 of the Contractor Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of that standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. (This requirement applies to time spent on federally assisted contracts only.) Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK  
and safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

**G. Federal Equal Opportunity Laws**

1. **Certification of Non-segregated Facilities** (for contracts over \$10,000.00)
2. **Title VI, Civil Rights Act of 1964**  
Affirmatively furthering the policies of the Fair Housing Act
3. **Section 109 of the Housing and Community Development Act of 1974.**  
No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act.
4. **Section 503 Handicapped** (for contracts \$2,500.00 or over)
5. **Age Discrimination Act of 1975**  
Prohibits against discrimination on the basis of age
6. **Section 504 of the Rehabilitation Act of 1973**  
Prohibits against discrimination on the basis of disability

**II. ADDITIONAL SPECIAL CONDITIONS FOR ALL CDBG CONSTRUCTION CONTRACTS.**

**A. Copeland “Anti-Kickback Act”**

The Contractor shall comply with the Copeland “Anti-Kickback Act” (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3. This Act provides that each Contractor or sub grantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. Town of Apple Valley shall report all suspected or reported violations to the U.S. Department of HUD.

**B. All Construction Contracts Expected to be Over \$2,000.00**

**Davis-Bacon Requirements**

The Contractor shall comply with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act Contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors shall be required to pay wages not less often than once a week. A copy of the prevailing wage rates is included in this solicitation. Any known changes to these wage rates prior to award of contract, shall be made known to offerers. In addition, Contractors will be required to provide payroll information to Town of Apple Valley on a weekly basis for verification of compliance. Town of Apple Valley shall report all suspected or reported violations of this condition to the U.S. Department of HUD and/or the U.S. Department of Labor.



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK  
(See attached copy of the applicable wage rates, which are incorporated by reference.)

**C. All Construction Contracts Over \$10,000.00**

**1) Contract Termination**

This contract may be terminated upon thirty (30) days written notice without cause. In the event this contract is terminated without cause, the Contractor shall be compensated for all services performed to termination date together with any expenses incurred to that date. This contract may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, In the event the contract is terminated through fault of the Contractor, the Contractor shall bear all additional expenses incurred by the Town for the completion of the contract including those required to retain additional contractors to complete the work.

**2) Equal Employment Opportunity**

Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

The Contractor also agrees to ensure that Minority Business Enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.

**D. All Construction Contracts Over \$100,000.00**

**1) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, and EPA Regulations of Non-Exempt Federal Contracts**

The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h) ); Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738; and Environmental Protection Agency Regulations (40 CFR, Part 15), which prohibit the use under Non-Exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations will be reported to HUD and to the USEPA Assistant Administrator for Enforcement (EN-329).

**2) Bonding and Insurance**

The following bonding and insurance items are required:

TOWN OF APPLE VALLEY

INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

A bid guarantee from the bidder equivalent to ten percent of the bid price. The bid "guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument:

- a. Accompanying the bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- c. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**III. RESTRICTION ON ALL PUBIC WORKS PROJECTS**

No Contractor, or subcontractor, of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) may be awarded a contract or a subcontract.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK



**Town of Apple Valley**  
**Economic Development Department - CDBG**  
**14955 Dale Evans Parkway**  
**Apple Valley, CA 92307**  
**PH: (760) 240-7000 – FX: (760) 240-7910**

**CERTIFICATION OF SPECIAL CONDITIONS FOR CDBG CONTRACTS**

In accordance with the applicable statutes and the regulations governing the special conditions for Community Development Block Grant Contracts, the Primary Contractor;

\_\_\_\_\_ certifies that they shall:

- Comply with all applicable special conditions for CDBG contracts as contained in Exhibit "A" of the contract.
  
- Insert appropriate provisions in all sub-contracts covering work under this contract to ensure compliance by sub-contractors.
  
- Be responsible for the submission of affidavits required of subcontractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
  
- Not enter into any sub-contract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

\_\_\_\_\_  
**Signature / Authorized Official**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Company**

# Attachments

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK  
**TOWN OF APPLE VALLEY**  
**PRECONSTRUCTION CONFERENCE**  
**DOCUMENT CHECKLIST**

NAME OF PRIME CONTRACTOR: \_\_\_\_\_

ADDRESS(ES): \_\_\_\_\_

**DOCUMENTS RETAINED BY CONTRACTOR FOR REFERENCE:**

- Copy of Department of Labor Wage Decision Number IL-\_\_\_\_\_ dated with \_\_\_\_\_ modifications dated \_\_\_\_\_.
- HUD form 4010 (7/03) "Federal Labor Standards Provisions"
- HUD Form 2554 "Supplementary Conditions of the Contract for Construction"
- Copies of "Equal Employment Opportunity", "Labor Standards" , "Employee Rights Under the Davis-Bacon Act: and "Job Safety" posters

**DOCUMENTS TO BE COMPLETED BY CONTRACTOR(S) AND RETURNED PRIOR TO EXECUTION OF CONTRACT:**

- Contractor's Certification Regarding Labor Standards and Prevailing Wage Requirements (All contracts over \$2,000)
- Certification of Contractor Regarding Employment Opportunities for Businesses and Lower Income Persons (All Contracts over \$10,000)
- Contractor's Section 3 Plan (All contracts over \$10,000)
- Subcontractor's Certification Regarding Equal Employment Opportunity (All subcontracts over \$10,000)
- Certificate of Eligible Contractors (All contracts)
- Copy of Certificate of Insurance/Workman's Compensation (All contracts)
- Copy of Contractor's Performance Bond (Recommended for most Contracts)

**DOCUMENTS TO BE PROVIDED PRIOR TO WORK COMMENCING:**

- Copy of executed construction contract(s)

**DOCUMENTS TO BE COMPLETED BY CONTRACTORS AS WORK PROGRESSES:**

- Copy of Weekly Payroll Reporting Form and Statement of Compliance (All Contracts over \$2,000 - Due within ten days (10) from the close of each work week)
- Town of Apple Valley Section Three Summary Report must be submitted prior to receipt of final payment.

Signed: \_\_\_\_\_

Title:

Representing: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**TOWN OF APPLE VALLEY**

**COMPLIANCE WITH SUPPLEMENTARY CONDITIONS OF THE**  
**CONTRACT FOR CONSTRUCTION**

I, \_\_\_\_\_ do hereby acknowledge that I have received a copy of the Supplementary Conditions of the Contract for Construction (HUD Form 2554) and attest that my attached work proposal has been made in accordance with these standards. I further acknowledge that I have received General Wage Determination, Federal Standards and the CDBG Requirements forms. I attest that my proposal reflects the Labor Standards, Equal Employment Opportunity, Equal Opportunity for Businesses and Lower Income Persons Located within the Project Area and Health and Safety Standards for this Federal Project. I also understand that all subcontractors who are part of my proposal are required to follow the Federal requirements, that they have been so informed by me and have adjusted their costs, if necessary, to reflect compliance with these standards.

I understand that the project for which I am submitting a bid is being assisted with federal funds, and should I be awarded the contract, I understand that the Supplementary Conditions of the Contract for Construction (HUD Form 2554) are applicable and shall be enforced by the Town of Apple Valley, the enforcement agency for the Community Development Block Grant program. I understand that my failure to abide by these standards may jeopardize funding for the project and result in cancellation of any contract which was made with my firm.

\_\_\_\_\_  
Bidding Firm

\_\_\_\_\_  
Name of Authorized Bidder (Type or Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Bidder

**Insert Current Department of Labor Wage  
Decision Number**

CA140037 08/22/2014 CA37



## Federal Labor Standards Provisions

U.S. Department of Housing  
and Urban Development  
Office of Labor Relations

### Applicability

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

**A. 1. (i) Minimum Wages.** 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 I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

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

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

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

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

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

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. 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 I(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 I(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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 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 HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, 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 subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

(c) 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 subparagraph A.3.(ii)(b).

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

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

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

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. 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 the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible 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 subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

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

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

C. **Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

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

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

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

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**TOWN OF APPLE VALLEY**

**COMPLIANCE WITH FEDERAL STANDARDS**

I, \_\_\_\_\_ do hereby acknowledge that I have received a copy of the Federal Labor Standards provisions (HUD Form 4010) and attest that my attached work proposal has been made in accordance with these standards. I further acknowledge that I have received General Wage Determination Number \_\_\_\_\_ with modification(s) dated \_\_\_\_\_, which contains the prevailing wage rates for this area as determined by the United States Government. I attest that my proposal reflects these prevailing wages for any wages I must pay to my employees for work done under this proposal. I also understand that all subcontractors who are part of my proposal are required to pay their employees the same prevailing wages, that they have been so informed by me and have adjusted their costs, if necessary, to reflect compliance with these standards.

I understand that the project for which I am submitting a bid is being assisted with federal funds, and should I be awarded the contract, I understand that these Federal Labor Standards are applicable and shall be enforced by the Town of Apple Valley, the enforcement agency for the Community Development Block Grant program. I understand that my failure to abide by these standards may jeopardize funding for the project and result in cancellation of any contract which was made with my firm.

\_\_\_\_\_  
Bidding Firm

\_\_\_\_\_  
Name of Authorized Bidder (Type or Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Bidder

**Supplementary Conditions of the Contract for Construction**

U.S. Department of Housing and Urban Development  
Office of Housing  
Federal Housing Commissioner

OMB Approval No. 2502-0470  
(Expires 5/31/2010)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to set forth the obligations of the contractor or subcontractor performing under the covered contract. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

**Article 1 – Labor Standards**

**Instructions**

Whenever only FHA mortgage insurance is involved, use paragraph (A) and (C) of Article 1 – Labor Standards. Whenever any direct form of assistance (Section 8, Section 202/811 Capital Advance, grants etc.) is involved, use paragraphs (A) and (B) and (C) of Article 1 – Labor Standards.

**Applicability**

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

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (1) The work to be performed by the classification

requested is not performed by a classification in the wage determination; and

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

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

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

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

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

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

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the

TOWN OF APPLE VALLEY

INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

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

3. (i) **Payrolls and basic records.** 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
- (2) That each laborer or mechanic (including each

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

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

(c) 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 A.3.(ii)(b) of this section.

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

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

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



TOWN OF APPLE VALLEY

INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (j) **Certification of Eligibility.** By entering into this contract the contractor certifies neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm

ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

3. **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime 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 subparagraph (2) of this paragraph.

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

C. The Contractor will be required to execute FHA Form No. 2403-A, Contractor's Prevailing Wage Certificate, as a condition precedent to insurance by the Federal Housing Administration of that certain mortgage loan, or an advance thereof, made or to be made by the mortgagee in connection with the construction of the project.

**Article 2 – Equal Employment Opportunity**

The applicant hereby agrees that it will incorporate or cause to be

## TOWN OF APPLE VALLEY

### INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

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

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

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

D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

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

H. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

*Provided, That* if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

I. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

J. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Article 3 – Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area**

(Applicable to Section 236 projects, where the estimated replacement cost of the project as determined by the Secretary of Housing and Urban Development exceeds \$500,000, and to all projects, including Section 236 regardless of estimated replacement cost, receiving rent supplement assistance under Title I, Section 101 of the Housing and Urban Development Act of 1965.)

A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary of Housing and Urban Development in which the projects located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

#### **Article 4 – Health and Safety**

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

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

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

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**TOWN OF APPLE VALLEY**

**COMPLIANCE WITH SUPPLEMENTARY CONDITIONS OF THE**  
**CONTRACT FOR CONSTRUCTION**

I, \_\_\_\_\_ do hereby acknowledge that I have received a copy of the Supplementary Conditions of the Contract for Construction (HUD Form 2554) and attest that my attached work proposal for work at \_\_\_\_\_ has been made in accordance with these standards. I further acknowledge that I have received General Wage Determination, Federal Standards and the CDBG Requirements forms. I attest that my proposal reflects the Labor Standards, Equal Employment Opportunity, Equal Opportunity for Businesses and Lower Income Persons Located within the Project Area and Health and Safety Standards for this Federal Project. I also understand that all subcontractors who are part of my proposal are required to follow the Federal requirements, that they have been so informed by me and have adjusted their costs, if necessary, to reflect compliance with these standards.

I understand that the project for which I am submitting a bid is being assisted with federal funds, and should I be awarded the contract, I understand that the Supplementary Conditions of the Contract for Construction (HUD Form 2554) are applicable and shall be enforced by the Town of Apple Valley, the enforcement agency for the Community Development Block Grant program. I understand that my failure to abide by these standards may jeopardize funding for the project and result in cancellation of any contract which was made by my firm.

\_\_\_\_\_  
Bidding Firm

\_\_\_\_\_  
Name of Authorized Bidder (Type or Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Bidder

# **TOWN OF APPLE VALLEY**

## **SECTION 3**

### **REQUIREMENTS**

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

## **Section 3 Plan**

### **General Policy Statement**

It is the policy of the Town of Apple Valley Housing Section to require its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment. The Housing Section implements this policy through the awarding of contracts to contractors, vendors, and suppliers, to develop employment and business opportunities for low-income residents of the Town of Apple Valley.

### **Purpose**

Section 3 is designed to promote local economic development, neighborhood economic improvement, and individual self-sufficiency through housing and community development projects funded in whole or in part by the United States Department of Housing and Urban Development (HUD). The purpose of Section 3 of the HUD Act of 1992, is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons.

Section 3 is a mechanism for providing jobs for residents and awarding contracts to businesses in areas where a project involving construction, demolition, or rehabilitation receives HUD financial assistance from the Community Development Block Grant (CDBG) Program, Home Investment Partnership Program (HOME), or Neighborhood Stabilization Program (NSP) in excess of \$200,000. Contractors or subcontractors that receive contracts in excess of \$100,000 for Section 3 covered projects and activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

In the event Section 3 covered project expenditures generate economic opportunities (training, employment, or contracts), these opportunities must be directed toward qualified Section 3 residents and Section 3 business concerns.

The purpose of Section 3 preferences is to be results oriented by: 1) encouraging business concerns that are not major sources of employment for low-income persons to increase their employment of these persons when economic opportunities arise from HUD financed construction related projects; and 2) promoting the growth of "profit-making" enterprises owned by low-income persons that substantially employ low-income persons with Section 3 contract awards. Title 24 CFR Part 135 – Economic Opportunities for Low- and Very Low-Income Persons, establishes the standards and procedures this Section 3 Plan is based upon, and is intended to ensure the objectives of Section 3 are met. The full regulation may be found at:

[http://www.access.gpo.gov/nara/cfr/waisidx\\_03/24cfr135\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/24cfr135_03.html).

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

### Recipient Responsibilities

The Town of Apple Valley will ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered contractors. These responsibilities include:

1. Making efforts to meet the minimum numerical goals found at 24 CFR Part 135.30;
2. Complying with specific responsibilities at 24 CFR Part 135.32; and
3. Submitting Annual Summary reports in accordance with 24CFR Part 135.90.

A grantee's combined investment in excess of \$200,000 of federal funding into projects arising in connection with housing construction, demolition, rehabilitation, or other public construction makes the requirements of Section 3 applicable to all individual properties that receive services with these funds—regardless of the actual amount that is spent on each individual unit or property.

If covered contractors receive awards that exceed \$100,000 for the construction and rehabilitation activities listed above, responsibility for Section 3 compliance is shared with that firm (with the exception of the submission of the Section 3 Annual report (Form HUD 60002), which must be submitted by the direct recipient of covered funds).

If no contractor receives an award exceeding \$100,000, responsibility for complying with the requirements of Section 3 stays with the grantee. Specifically, the grantee shall be responsible for awarding 10 percent of the total dollar amount of all covered contracts to Section 3 business concerns. Each recipient shall fulfill the responsibilities as outlined in this Section 3 Plan.

To ensure that to the greatest extent possible contractors and subcontractors are in compliance with Section 3 requirements, each recipient of Section 3 covered financial assistance is responsible for the following:

1. Implementing procedures to notify Section 3 residents and business concerns about training and employment opportunities generated by Section 3 covered assistance.
2. Implementing procedures to notify Section 3 business concerns about the availability of contracting opportunities generated by Section 3 covered assistance.
3. Notifying potential contractors completing work on Section 3 covered projects of their responsibilities.
4. Incorporating the Section 3 Clause (verbatim) into all covered solicitations and contracts (see 24 CFR Part 135.38) <http://law.justia.com/cfr/title24/24-1.2.1.2.10.2.93.5.html> **Exhibit 1**.
5. Facilitating the training and employment of Section 3 residents and the awarding of contracts to Section 3 business concerns.
6. Assisting and actively cooperating with the Town of Apple Valley Housing Section in obtaining the compliance of contractors and subcontractors.
7. Refraining from entering into contracts with contractors that are in violation with the Section 3 regulations.
8. Documenting actions taken to comply with Section 3 requirements. **Exhibit 2**.
9. General contractors and subcontractors are required to submit the Section 3 Summary Report upon project completion. **Exhibit 3**.

In order to meet low-income resident employment requirements, or Section 3 business concerns requirements, contractors/subcontractors may wish to consider using the job/career center services of the agencies listed in **Exhibit 4**. In addition, contractors and subcontractors are encouraged to utilize the services of other agencies that serve the economically disadvantaged within the project area.

### Section 3 Compliance

Section 3 compliance is based on the following:

1. Meeting the minimum numerical goals set forth at 24 CFR Part 135.30
  - a. 30 percent of the aggregate number of new hires shall be Section 3 residents; and
  - b. 10 percent of all covered construction contracts will be awarded to Section 3 business concerns.
2. Recipients that fail to meet the numerical goals above bear the burden of demonstrating why it was not possible.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

- a. Such justifications should describe, in writing, the efforts that were taken, barriers encountered, and other relevant information that will allow the Town of Apple Valley to make a determination regarding compliance.

**Selection Priority for Section 3 Residents and Section 3 Business Concerns**

Section 3 encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals. This preference is triggered by the need for new hires (whether individual employees or contractors or subcontractors) for work on a project assisted by HUD financial assistance in an excess of \$100,000 covered by Section 3.

Selection Priority for Section 3 Residents in Training and Employment

A Section 3 resident seeking the preference in training and employment shall certify or submit evidence to the contractor or subcontractor as needed. **Exhibit 5** must be completed by potential Section 3 residences seeking the preference in training and employment outlined in this Section 3 Plan. A low-income resident is defined by their household annual gross income and household size as designated on **Exhibit 5**.

This self-certification is one of the methods used by the Town of Apple Valley, contractors, and subcontractors to confirm eligibility for Section 3 preference. Should said certification come into question, the Town of Apple Valley and contractors/subcontractors may request other evidence of eligibility for the preference, such as evidence of receipt of public assistance or evidence of participation in a public assistance program.

The Section 3 resident certification, **Exhibit 5**, must be submitted no later than the date of the pre-construction meeting. Please note that nothing in the Section 3 Plan shall be construed to require the employment of a Section 3 resident who does not meet the background and qualifications of the position to be filled).

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

Selection Priority for Section 3 Business Concerns

The form provided as **Exhibit 6** must be used by contractors and subcontractors in order to establish Section 3 certification from contracting business concerns. This attachment must be submitted by the bid deadline by all bidders. A business concern seeking to qualify for a Section 3 contracting preference will certify that the business concern is a Section 3 business concern and provide appropriate documentation with the certification. Should said certification come into question, the Town of Apple Valley and contractors/subcontractors may request other evidence of eligibility for the Section 3 preference.

A Section 3 business concern seeking a contract or a subcontract must demonstrate to the satisfaction of the party awarding the contract or subcontract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract or subcontract. The ability to perform successfully under the terms and conditions of all proposed contracts and subcontracts is required of all contractors and subcontractors subject to Section 3 requirements.

**Complaint Procedure**

A complaint may be filed alleging a violation of Section 3 requirements and may be filed by Section 3 residents and Section 3 business concerns. Complaints are investigated by HUD and where appropriate, voluntary resolutions are sought. Grievances that are not resolved voluntarily can result in an administrative hearing.

A complaint must be written and include:

- Name and address of grievant
- Name and address of contractor/subcontractor
- Description of acts or omission
- Corrective action sought

Complaints should be filed with the Town of Apple Valley Housing Section and, if warranted, may be appealed to the Area office of HUD (Los Angeles Area) and HUD in Washington, D.C., at the addresses below.



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

1. Town of Apple Valley  
Housing Section  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
760 240-7000 extension 7900
  
2. HUD LA Area Office, Region IX  
Director, Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
611 West Sixth Street, Suite 1000-9DD  
Los Angeles, CA 90017-3101  
213 534 2572
  
3. HUD Washington  
Assistant Secretary, Fair Housing and Equal Opportunity  
Attention: Office of Economic Opportunity  
U.S. Department of Housing and Urban Development  
451 Seventh Street, SW, Room 5100  
Washington, DC 20410-2000

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Town of Apple Valley**  
**Section 3 Plan**  
**Assurance of Compliance**

The United States Department of Housing and Urban Development Act of 1968 require, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

This is to certify that I have read and understand the Section 3 resident employment and Section 3 resident business requirements that apply to the project named above, said requirements being known as the Section 3 Clause found in 24 CFR 135 and that neither the project nor the company are under any contractual restrictions or other disabilities which would prevent the company from complying with said requirements.

As evidence of compliance, the undersigned certifies that he/she will:

1. Take affirmative steps to hire and train lower income residents of the project area, and
2. Solicit the participation of businesses located in or owned substantially by persons residing in the area of the project.

Company Name: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Project Title: \_\_\_\_\_

Signature of Company Officer: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 1**  
**Section 3 Clause**

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

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

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

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

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

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

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

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 2**  
**Section 3 Compliance – Suggested Examples**

Following are acceptable methods, that when documented, demonstrate compliance with Section 3.

1. Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for a contractor's or subcontractor's training and employment positions.
2. Advertising the jobs to be filled through local media sources.
3. Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a Section 3 Business Concern) that will undertake efforts to match eligible and qualified Section 3 residents with the training and employment positions that the contractor intends to fill.
4. Establishing training programs, which are consistent with the requirements of the Department of Labor, for public housing residents and other Section 3 residents in the building trades.
5. Advertising the training and employment positions by distributing and posting flyers, which identify the positions to be filled, the qualifications required, and where to obtain additional information.
6. Sponsoring a job informational meeting to be conducted at a location or in the neighborhood or service area of the Section 3 covered project.
7. Arranging assistance in conducting job interviews and completing job applications for Section 3 residents in the neighborhood or service area in which a Section 3 project is located.
8. Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.
9. Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

Efforts to Award Contracts to Section 3 Business Concerns that Demonstrate Compliance with the: Greatest Extent Feasible” Requirement of Section 3.

1. In determining responsibility of potential contractors/subcontractors, consider history of Section 3 compliance as evidenced by past actions and current plans for pending contracts.
2. Contacting business assistance agencies, minority contractors, associations, and community organizations to inform them of contracting opportunities and request assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
3. Providing written notice to all known Section 3 Business Concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 Business Concerns to respond to the bid invitations or request for proposals.
4. Following up with Section 3 Business Concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
5. Coordinating pre-bid meetings at which Section 3 Business Concerns could be informed of upcoming contracting and subcontracting opportunities.
6. Advising Section 3 Business Concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
7. Arranging solicitations, times for presentations of subcontract bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 Business Concern.
8. Where appropriate, breaking out subcontract work items into economically feasible units to facilitate participation by Section 3 Business Concerns.
9. Advertising subcontracting opportunities through trade association papers and newsletters, and through other local media, such as newspapers of general circulation.
10. Developing a list of eligible Section 3 Business Concerns.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 3**  
**Town of Apple Valley**  
**Section 3 Summary Report**

<b>Project:</b>					
<b>Company Name</b>					
<b>Part 1: Employment and Training: Columns B, C and F are mandatory fields, Include new hires in E &amp; F)</b>					
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Job Category</b>	Number of New Hires	Number of New Hires that are Sec. 3 Residents	% of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents	% of Total Staff Hours for Section 3 Employees and Trainees	<b>Number of Section 3 Trainees</b>
<b>Professionals</b>					
<b>Technicians</b>					
<b>Office/Clerical</b>					
<b>Construction by Trade (List trade)</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Trade</b>					
<b>Other (List)</b>					
<b>Total</b>					

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

<b>Total dollar amount of all contracts awarded on the project</b>	<b>\$</b>
<b>Total dollar amount of contracts awarded to Section 3 businesses</b>	<b>\$</b>
<b>Percentage of the total dollar amount that was awarded to Section 3 businesses</b>	<b>%</b>
<b>Total number of Section 3 businesses receiving contracts</b>	
<b>Non-Construction Contracts</b>	
<b>Total dollar amount of all non-construction contracts awarded on the project/activity</b>	<b>\$</b>
<b>Total dollar amount of non-construction contracts awarded to Section 3 businesses</b>	<b>\$</b>
<b>Percentage of the total dollar amount that was awarded to Section 3 businesses</b>	<b>%</b>
<b>Total number of Section 3 businesses receiving non-construction contracts</b>	
<b>Summary</b>	
Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low-and very-low income persons, particularly those who are recipients of government assistance for housing. Check all that apply.	
	Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
	Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
	Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
	Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
	Other, please describe on a separate sheet of paper.

Signature of Company Officer: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Please submit within seven (7) days of project completion to:

**Christopher Moore**  
**Housing & Community Development Specialist**  
**Town of Apple Valley**  
**14955 Dale Evans Parkway**  
**Apple Valley, CA 92307**  
**(760) 240 7000 x 7921**  
**cmoore@applevalley.org**

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 4**  
**Job and Career Center Services**

State Employment Development Department (EDD)  
Workforce Services Branch  
15419 Cholame  
Victorville, CA 92392  
760 241-1682

Housing Authority County of San Bernardino  
715 E. Brier Drive  
San Bernardino, CA 92408-2841  
909 890-4618

One Stop Career Center  
15555 Main Street  
Hesperia, CA 92345  
760 949-8526

Victor Valley College  
Student Employment Office  
18422 Bear Valley Road  
Victorville, CA 92395  
760 245-4271 extension 2244

County of San Bernardino  
Regional Occupation Program (ROP)  
601 North E Street  
San Bernardino, CA 92401  
909 386-2461

Apple Valley Unified School District  
22974 Bear Valley Road  
Apple Valley, CA 92308  
760 247-8001

Hesperia Unified School District  
15576 Main Street  
Hesperia, CA 92345  
760 244-4411

Victorville Unified School District  
16350 Mojave Road  
Victorville, CA 92395  
(760) 955-3201



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 5**

**Town of Apple Valley/Housing Section**  
**14955 Dale Evans Parkway**  
**Apple Valley, CA 92307**  
**760 240-7000 x7916**

**SECTION 3 RESIDENT HOUSEHOLD INCOME CERTIFICATION**

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in 24 CFR 135.5. (An example of evidence of legibility for the preference is evidence of receipt of public assistance or evidence of participation in a public assistance program).

I, \_\_\_\_\_, am a legal resident of the Town of Apple Valley and meet the income eligibility guidelines listed below for my household size.

My permanent address is: \_\_\_\_\_  
 \_\_\_\_\_

I have attached the following documentation as evidence of my status:

	A picture identification card and proof of current residency is required
	Copy of Section 8 Voucher
	Evidence of eligibility or participation in a federally-assisted program for low and very low income persons
	Evidence of eligibility or participation in a state or local assistance program for low or very low income persons
	Federal income tax returns
	Other:

Signature	Date
Print Name	

*Circle the appropriate categories for your family size and income*

<b>Number of Persons in Your Family</b>								
	1	2	3	4	5	6	7	8
EXTREMELY LOW	13,650	15,600	17,550	19,500	21,100	22,650	24,200	25,750
VERY LOW	22,750	26,000	29,250	32,500	35,100	37,700	40,300	42,900
LOW	36,400	41,600	46,800	52,000	56,200	60,350	64,500	68,650

**Warning:** Title 18, Us Code Section 1001, states that a person who knowingly and willingly makes false or fraudulent statements to any Department or Agency of the United States is guilty of a felony. State law may also provide penalties for false or fraudulent statements.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 6**

**Section 3 Business Concern Application**

**Town of Apple Valley/Housing Section  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
760 240-7000 x7916**

*All businesses must complete this form.*

<b>SECTION 3 BUSINESS CONCERN APPLICATION</b>			
Business Name:			
D.B.A. (if different from above):			
Address:	City:	State/Zip:	
Business Phone: (     )	Fax: (     )		
Email:	Business Website:		
Federal Employer Identification Number:	Owners Social Security Number (if no EIN):		
Contact Person & Title:	Contact Phone:		
Trade Description:			
<input type="checkbox"/> Carpentry	<input type="checkbox"/> Heating (HVAC)	<input type="checkbox"/> Electrical	
<input type="checkbox"/> Painting	<input type="checkbox"/> Masonry Restoration	<input type="checkbox"/> Asbestos	
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Roofing	<input type="checkbox"/> Lead	
<input type="checkbox"/> General Contractor	<input type="checkbox"/> Concrete	Abatement	
<input type="checkbox"/> Carpet/Flooring	<input type="checkbox"/> Rubbish Removal/Hauling	<input type="checkbox"/> Ironwork	
<input type="checkbox"/> Appraisal Services	<input type="checkbox"/> Landscaping	<input type="checkbox"/> Demolition	
<input type="checkbox"/> Other _____			
Date Business was established: _____ / _____ / _____ <span style="margin-left: 100px;"><i>Month</i></span> <span style="margin-left: 100px;"><i>Day</i></span> <span style="margin-left: 100px;"><i>Year</i></span>			
Type of Business Entity (check one):			
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietorship	
<input type="checkbox"/> Limited Liability Corporation (LLC)		<input type="checkbox"/> Limited Liability Partnership (LLP)	
<input type="checkbox"/> Joint Venture		Other (Describe): _____	
Number of Employees:	Full-time: _____	Part-time: _____	Contract: _____ Total: _____
Section 3 employees:	Full-time: _____	Part-time: _____	Contract: _____ Total: _____

**Exhibit 7**

<b>SECTION 3 BUSINESS CONCERN APPLICATION</b>	
<b>Resident Business Owner(s)</b>	

If your business qualifies because it is owned by one or more Section 3 residents, please complete this form.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Name of Owner:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**Name of Business:** \_\_\_\_\_

**Percentage of Ownership:** \_\_\_\_\_ %

Check the appropriate box for your family size and income:

Check Box	# of Persons in Household	Gross Household Income Max.
<input type="checkbox"/>	1 Person	\$36,400
<input type="checkbox"/>	2 Persons	\$41,600
<input type="checkbox"/>	3 Persons	\$46,800
<input type="checkbox"/>	4 Persons	\$52,000
<input type="checkbox"/>	5 Persons	\$56,200
<input type="checkbox"/>	6 Persons	\$60,350
<input type="checkbox"/>	7 Persons	\$64,500
<input type="checkbox"/>	8 Persons	\$68,650

I certify that I am a resident of Apple Valley. My Total Household Income last year was less than the amount shown above for my family size.

*If the business is owned by more than one (1) Section 3 resident, each should submit a separate Resident Business Owner Verification Form. List each owner below:*

I certify that the Section 3 residents listed below own at least 51% of the business.

Name	Position	Percentage of Ownership

<b>Print Name:</b>	<b>Date:</b>
<b>Signature:</b>	

**Warning:** Title 18, Us Code Section 1001, states that a person who knowingly and willingly makes false or fraudulent statements to any Department or Agency of the United States is guilty of a felony. State law may also provide penalties for false or fraudulent statements.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Exhibit 8**

**SECTION 3 BUSINESS CONCERN**  
**30% + Workforce**

A business can be certified as a Section 3 Business Concern if at least 30% of its permanent, full-time employees are Section 3 residents of Apple Valley, or were section 3 residents within three (3) years of the date of first employment with the business. For your firm to be eligible UNDER THIS CRITERIA, you must provide the following information for all permanent full-time employees.

**Copy this form as necessary.**

<u>LIST NAME AND ADDRESS FOR ALL EMPLOYEES</u>	<b>DATE HIRED</b> (MM/DD/YYYY)	<b>CHECK IF SECTION 3 RESIDENT*</b>	<b>JOB TITLE/TRADE</b>
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Name: Address: City/Zip:		<input type="checkbox"/>	
Total Number of Employees:			
Number of Section 3 Residents:			
Percentage of Total Workforce:			

- Refer to the Household Size and Income Chart on Exhibit 7.

***I certify that the above statements are true, complete and correct to the best of my knowledge and belief.***

**Print Name:**

**Title:**

**Company Name:**

**Date:**

**Signature:**

**Warning:** Title 18, Us Code Section 1001, states that a person who knowingly and willingly makes false or fraudulent statements to any Department or Agency of the United States is guilty of a felony. State law may also provide penalties for false or fraudulent statements.

Exhibit 9

**SECTION 3 NOTICE**

**EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND  
LOWER INCOME PERSONS IN CONNECTION WITH HUD  
ASSISTED PROJECTS**

This project is covered by the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended.

TO THE MAXIMUM EXTENT FEASIBLE, OPPORTUNITIES FOR TRAINING AND JOBS ARISING IN CONNECTION WITH HUD-ASSISTED PROJECT, WILL BE GIVEN TO LOWER INCOME RESIDENTS OF THE PROJECT AREA.

TO THE MAXIMUM EXTENT FEASIBLE, WE WILL UTILIZE SMALL BUSINESS CONCERNS LOCATED IN, OR SUBSTANTIALLY OWNED BY, RESIDENTS OF THE PROJECT AREA, IN THE AWARD OF CONTRACTS AND PURCHASE OF SERVICES AND SUPPLIES.

Any lower income resident seeking training or employment or any other business concern located in or substantially owned by persons residing in the project area (Town of Apple Valley) seeking contract opportunities who alleges noncompliance, may file a grievance:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
LOS ANGELES OFFICE

Office of Community Planning and Development, 9DD  
611 W. 6th Street, Room 1000  
Los Angeles, CA 90017-3127



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**Definitions**

<b>Employment Opportunities</b>	With respect to Section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with this Section 3 covered project including management and administrative jobs.
<b>Full-time</b>	A position that is temporary, seasonal, or permanent that requires at least 1,750 hours of employment on an annual basis.
<b>Low-income</b>	Families (including single persons) whose income does not exceed 80% of the (adjusted) median family income of the MSA area. (Exhibit 5).
<b>Project Area</b>	A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other documents as a neighborhood, village or similar geographic designation; or the entire jurisdiction of a unit of general local government
<b>New Hires</b>	Means full-time employees for permanent, temporary, or seasonal employment opportunities which will be recruited. Includes new hires of subcontractors. New hires are any employees who are added to the payroll full-time to work on a contract. To the greatest extent feasible, one out of three of new hires should be Section 3 residents.
<b>Metropolitan Statistical Area (MSA)</b>	A primary metropolitan statistical area (MSA), as established by HUD's Office of Management and Budget. The entire geographic area encompassed by the political boundaries of the Town of Apple Valley has been defined as the MSA for this Section 3 Plan.
<b>Section 3 Resident</b>	A public housing resident; or an individual who resides in the MAS in which this Section 3 covered assistance is expended and who is a low-income person or a very, low-income person as defined in Exhibit XX
<b>Section 3 Business Concern</b>	A business concern that is (1) 51 percent or more owned by a Section 3 resident, or (2) whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or (3) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) or (2) in this definition of "Section 3 Business Concern." (This part means that for a business to receive a preference under item (3) above, it must provide evidence that it subcontracted at least 25% of all subcontracts for the previous 12 months (calendar/fiscal year) to bona fide Section 3 Business Concerns.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

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<b>Section 3 Covered Contract</b>	A contract or subcontract awarded by the Town of Apple Valley or contractor/subcontractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with this Section 3 covered project. This definition does not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of materials, that contract constitutes a Section 3 covered contract.
<b>Section 3 Covered Project</b>	A covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards); other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance (CDBG, HOME, NSP, etc.).
<b>Subcontractor</b>	Any entity (other than a person who is an employee of the contractor) that has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.
<b>Very low-income</b>	Families (including single persons) whose income does not exceed 50% of the area (adjusted) median family income. See Exhibit XX

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# Equal Employment Opportunity is THE LAW

## Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under the following Federal authorities:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### **INDIVIDUALS WITH DISABILITIES**

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

### **VIETNAM ERA, SPECIAL DISABLED, RECENTLY SEPARATED, AND OTHER PROTECTED VETERANS**

38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans, qualified special disabled veterans, recently separated veterans, and other protected veterans.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or call (202) 693-0101, or an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

## Private Employment, State and Local Governments, Educational Institutions

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under the following Federal laws:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

### **DISABILITY**

The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

### **AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

### **SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these Federal laws.

If you believe that you have been discriminated against under any of the above laws, you should contact immediately:

The U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling toll free (800) 669-4000. For individuals with hearing impairments, EEOC's toll free TDD number is (800) 669-6820.

## Programs or Activities Receiving Federal Financial Assistance

### **RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX**

In addition to the protection of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal assistance.

### **INDIVIDUALS WITH DISABILITIES**

Sections 501, 504 and 505 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance in the federal government. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

If you believe you have been discriminated against in a program of any institution which receives Federal assistance, you should contact immediately the Federal agency providing such assistance.





# NOTICE TO ALL EMPLOYEES

## Working on Federal or Federally Financed Construction Projects

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### **MINIMUM WAGES**

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

### **OVERTIME**

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

## FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

### PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

### OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

### ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

### APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

### PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627



**WWW.WAGEHOUR.DOL.GOV**

# Job Safety and Health It's the law!

**OSHA**  
Occupational Safety  
and Health Administration  
U.S. Department of Labor

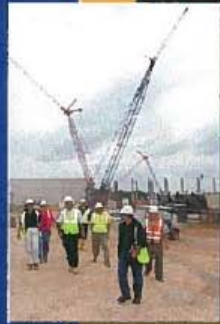
## EMPLOYEES:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in that inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the *OSH Act*.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the *OSH Act* that apply to your own actions and conduct on the job.

## EMPLOYERS:

- You must furnish your employees a place of employment free from recognized hazards.
- You must comply with the occupational safety and health standards issued under the *OSH Act*.

This free poster available from OSHA –  
*The Best Resource for Safety and Health*



Free assistance in identifying and correcting hazards or complying with standards is available to employers, without citation or penalty, through OSHA-supported consultation programs in each state.

**1-800-321-OSHA**  
[www.osha.gov](http://www.osha.gov)

OSHA 3185-12-001

# Seguridad y Salud en el Trabajo ¡Es la Ley!



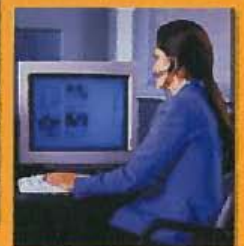
Administración de Seguridad  
y Salud Ocupacional  
Departamento del Trabajo  
de los Estados Unidos

## EMPLEADOS:

- Usted tiene el derecho de notificar a su empleador o a la OSHA sobre peligros en el lugar de trabajo. Usted también puede pedir que la OSHA no revele su nombre.
- Usted tiene el derecho de pedir a la OSHA que realice una inspección si usted piensa que en su trabajo existen condiciones peligrosas o poco saludables. Usted o su representante pueden participar en esa inspección.
- Usted tiene 30 días para presentar una queja ante la OSHA si su empleador llega a tomar represalias o discriminar en su contra por haber denunciado la condición de seguridad o salud o por ejercer los derechos consagrados bajo la Ley OSH.
- Usted tiene el derecho de ver las citaciones enviadas por la OSHA a su empleador. Su empleador debe colocar las citaciones en el lugar donde se encontraron las supuestas infracciones o cerca del mismo.
- Su empleador debe corregir los peligros en el lugar de trabajo para la fecha indicada en la citación y debe certificar que dichos peligros se hayan reducido o desaparecido.
- Usted tiene derecho de recibir copias de su historial o registro médico y el registro de su exposición a sustancias o condiciones tóxicas o dañinas.
- Su empleador debe colocar este aviso en su lugar de trabajo.
- Usted debe cumplir con todas las normas de seguridad y salud ocupacionales expedidas conforme a la Ley OSH que sean aplicables a sus propias acciones y conducta en el trabajo.

## EMPLEADORES:

- Usted debe proporcionar a sus empleados un lugar de empleo libre de peligros conocidos.
- Usted debe cumplir con las normas de seguridad y salud ocupacionales expedidas conforme a la Ley OSH.



Los empleadores pueden obtener ayuda gratis para identificar y corregir las fuentes de peligro y para cumplir con las normas, sin citación ni multa, por medio de programas de consulta respaldados por la OSHA en cada estado del país.

**1-800-321-OSHA**  
[www.osha.gov](http://www.osha.gov)

OSHA 3187-01-07B

# EMPLOYEE RIGHTS

## UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

### FEDERAL MINIMUM WAGE

**\$7.25** PER HOUR

BEGINNING JULY 24, 2009

**OVERTIME PAY** At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

**CHILD LABOR** An employee must be at least **16** years old to work in most non-farm jobs and at least **18** to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths **14** and **15** years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

**No more than**

- **3** hours on a school day or **18** hours in a school week;
- **8** hours on a non-school day or **40** hours in a non-school week.

Also, work may not begin before **7 a.m.** or end after **7 p.m.**, except from June 1 through Labor Day, when evening hours are extended to **9 p.m.** Different rules apply in agricultural employment.

**TIP CREDIT** Employers of "tipped employees" must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

**ENFORCEMENT** The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Employers may be assessed civil money penalties of up to \$1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to \$11,000 for each employee who is the subject of a violation of the Act's child labor provisions. In addition, a civil money penalty of up to \$50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to \$100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

**ADDITIONAL INFORMATION**

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.



For additional information:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**WWW.WAGEHOUR.DOL.GOV**



# DERECHOS DEL EMPLEADO

## BAJO LA LEY DE NORMAS JUSTAS DE TRABAJO

SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

### SALARIO MÍNIMO FEDERAL

# \$7.25 POR HORA

A PARTIR DEL 24 DE JULIO DE 2009

#### PAGO DE SOBRETUENDIMIENTO

Por lo menos tiempo y medio (1½) de su tasa regular de pago por todas las horas trabajadas en exceso de 40 en una semana laboral.

#### EMPLEO DE MENORES DE EDAD

El empleado ha de tener por lo menos **16 años** de edad para trabajar en la mayoría de los trabajos no agrícolas y por lo menos tener **18 años** para trabajar en trabajos no agrícolas declarados arriesgados por el/la Secretario(a) de Trabajo.

Jóvenes de **14 y 15 años** de edad pueden trabajar fuera de horas escolares en varios trabajos que no sean en fabricación, minería, o arriesgados, bajo las siguientes condiciones:

**No más de**

- 3 horas en un día escolar o 18 horas en una semana escolar;
- 8 horas en un día no escolar o 40 horas en una semana no escolar.

Además, el trabajo no puede empezar antes de las **7 de la mañana** o terminar después de las **7 de la tarde** salvo del primero de junio hasta el Día de Labor, cuando las horas de la tarde se extienden hasta las **9 de la noche**. Se aplican reglas distintas al empleo agrícola.

#### CRÉDITO POR PROPINAS

Empresarios de empleados que reciben propinas han de pagar un salario en efectivo de por lo menos \$2.13 por hora si declaran un crédito por propina contra sus obligaciones hacia el salario mínimo. Si las propinas del empleado combinadas con el salario en efectivo que paga el empresario de por lo menos \$2.13 por hora no equivalen al salario mínimo por hora, el empresario ha de suplir la diferencia. También se tiene que cumplir con otras condiciones.

#### CUMPLIMIENTO

El Departamento de Trabajo puede recuperar salarios atrasados administrativamente o mediante acción legal en los tribunales, para empleados a los cuales se les haya pagado por debajo y en violación de la ley.

A los empresarios se les puede imponer penas pecuniarias civiles de hasta \$1,100 por cada infracción intencional o repetida de las provisiones de la ley del pago del salario mínimo y del pago de sobretuendimiento y hasta \$11,000 por cada empleado que sea empleado en violación de las provisiones de la ley sobre el empleo de menores. Adicionalmente, se puede imponer una pena pecuniaria civil de hasta \$50,000 por cada infracción de las provisiones sobre el empleo de menores si causa la muerte o una lesión seria de un empleado menor de edad, y se pueden doblar dichas evaluaciones, hasta \$100,000, cuando se determinan que las infracciones son intencionales o repetidas. La ley también prohíbe la discriminación o el despido del trabajador por haber presentado una denuncia o por participar en cualquier procedimiento bajo la Ley.

#### INFORMACIÓN ADICIONAL

- Ciertas ocupaciones y ciertos establecimientos están exentos de las provisiones de pago de salario mínimo y de sobretuendimiento.
- Se aplican provisiones especiales a trabajadores de Samoa Americana y de la Comunidad de las Islas Marianas del Norte.
- Algunas leyes estatales proveen más protecciones al empleado; el empresario ha de cumplir con ambas.
- La ley exige que los empresarios pongan este cartel donde los empleados lo puedan ver fácilmente.
- A los empleados menores de 20 años de edad se les puede pagar menos de \$4.25 por hora durante los primeros 90 días civiles consecutivos de empleo con un empresario.
- Se les puede pagar menos del salario mínimo bajo ciertos certificados especiales emitidos por el Departamento de Trabajo a ciertos estudiantes de tiempo completo, estudiantes aprendices y a trabajadores con impedimentos.



Para información adicional:

# 1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

# WWW.WAGEHOUR.DOL.GOV



U.S. Department of Labor | Wage and Hour Division

WHD 1088SPA (Revised July 2009)

June 2006

U.S. Department of Housing and Urban Development

# **MAKING DAVIS-BACON WORK**

*A Contractor's Guide to Prevailing Wage  
Requirements for Federally-Assisted  
Construction Projects*

# Introduction

This Guide has been prepared for you as a contractor performing work on construction projects that are **assisted** by the Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements.

This Guide **does not** address contractor requirements involved in **direct** Federal contracting where HUD or another Federal agency enters into a procurement contract. In this latter case, the Federal Acquisition Regulations (FAR) are applicable. While the guidance contained in this Guide is generally applicable to **any** Davis-Bacon covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

Our objective here is to provide you with a guide which is simple and nonbureaucratic yet comprehensive and which will help you better understand and comply with Davis-Bacon labor standards. HUD's Office of Labor Relations worked closely with the Department of Labor's Wage and Hour Division to make sure that the labor standards provisions in your contract and the specifics of complying with them represent the latest information. It is the Department of Labor which has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

There are three chapters in this Guide. The first chapter offers a brief description of the laws and regulations associated with Federal labor standards administration and enforcement and discusses both what's in your contract that requires Davis-Bacon compliance and your responsibilities. The second chapter deals with labor standards and payroll reporting requirements. The third chapter discusses what can happen in the event there is a dispute about the wage rates that should be (or have been) paid and any back wages that may be due.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. Should you wish assistance in determining whether Davis-Bacon wage rates apply to a particular project or if you need other related technical assistance, please consult with the HUD Labor Relations Field staff for your area. If you don't know which staff to contact, a list of Labor Relations field offices and their geographic areas and telephone numbers can be found on HUD's Home Page at the address below.

Visit the Office of Labor Relations  
on the World Wide Web HUD Home Page at:

<http://www.hud.gov/offices/olr>

Obtain additional copies of this Guide and other publications at our web site or by telephone from HUD's Customer Service Center at (800) 767-7468.



# Table of Contents

## CHAPTER 1.

### Laws, Regulations, Contracts and Responsibilities

<b>1-1 Davis-Bacon and Other Labor Laws</b> .....	56
a. The Davis-Bacon Act (DBA) .....	56
b. The Contract Work Hours and Safety Standards Act (CWHSSA).....	56
c. The Copeland Act (Anti-Kickback Act) .....	57
d. The Fair Labor Standards Act (FLSA) .....	57
<b>1-2 Davis-Bacon Regulations</b> .....	57
<b>1-3 Construction Contract Provisions</b> .....	57
<b>1-4 Responsibility of the Principal Contractor</b> .....	58
<b>1-5 Responsibility of the Contract Administrator</b> .....	58

## CHAPTER 2.

### How to Comply with Labor Standards and Payroll Reporting Requirements

#### SECTION I — THE BASICS

<b>2-1 The Wage Decision</b> .....	60
a. The work classifications and wage rates .....	60
b. Posting the wage decision .....	61
<b>2-2 Additional “Trade” Classifications and Wage Rates</b> .....	61
a. Additional classification rules .....	61
b. Making the request .....	61
c. HUD review .....	62
d. DOL decision.....	62
<b>2-3 Certified Payroll Reports</b> .....	62
a. Payroll formats .....	62
b. Payroll certifications .....	63
c. “No work” payrolls.....	63
d. Payroll review and submission .....	63
e. Payroll retention .....	63
f. Payroll inspection .....	63
<b>2-4 Davis-Bacon Definitions</b> .....	64
a. Laborer or mechanic .....	64

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

b. Employee .....	65
c. Apprentices and trainees .....	65
d. Prevailing wages or wage rates.....	65
e. Fringe benefits .....	66
f. Overtime .....	66
g. Deductions .....	66
h. Proper designation of trade .....	66
i. Site of work.....	67

**SECTION II — REPORTING REQUIREMENTS**

<b>2-5 Completing a Payroll Report.....</b>	<b>67</b>
a. Project and contractor/subcontractor information .....	68
b. Employee information.....	68
c. Work classification.....	68
d. Hours worked .....	68
e. Rate of pay.....	68
f. Gross wages earned .....	69
g. Deductions .....	69
h. Net pay.....	69
i. Statement of compliance .....	69
j. Signature .....	70

**SECTION III — PAYROLL REVIEWS AND CORRECTIONS**

<b>2-6 Compliance Reviews .....</b>	<b>70</b>
a. On-site interviews .....	70
b. Project payroll reviews .....	70
<b>2-7 Typical Payroll Errors and Required Corrections .....</b>	<b>70</b>
a. Inadequate payroll information .....	71
b. Missing addresses and Social Security Numbers .....	71
c. Incomplete payrolls .....	71
d. Classifications .....	71
e. Wage rates.....	71
f. Apprentices and trainees.....	71
g. Overtime .....	71
h. Computations .....	72
i. Deductions .....	72
j. Fringe benefits.....	72
k. Signature.....	72
l. On-site interview comparisons.....	72

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**2-8 Restitution for Underpayment of Wages** ..... 73

- a. Notification to the employer/prime contractor..... 73
- b. Computing wage restitution ..... 73
- c. Correction payrolls..... 73
- d. Review of correction CPR ..... 73
- e. Unfound workers ..... 73

**CHAPTER 3.**

**Labor Standards Disputes, Administrative Reviews,  
Withholding, Deposits and Escrow Accounts, and Sanctions**

**3-1 Introduction**..... 75

**3-2 Administrative Review on Labor Standards** ..... 75

- a. Additional classifications and wage rates ..... 75
- b. Findings of underpayment ..... 76

**3-3 Withholding**..... 76

**3-4 Deposits and Escrow Accounts** ..... 77

**3-5 Administrative Sanctions**..... 78

- a. DOL debarment..... 78
- b. HUD sanctions ..... 78

**3-6 Falsification of Certified Payroll Reports** ..... 78

**Acronyms and Symbols** ..... 79

**Davis-Bacon – Related Web Sites.** ..... 79

**Exhibits**

- HUD-4720, Project Wage Rate Sheet ..... 80
- WH-347, Payroll Form..... 81
- Statement of Compliance ..... 83

# CHAPTER 1.

## Laws, Regulations, Contracts and Responsibilities

The following paragraphs describe what the labor standards laws and regulations actually say and what they mean to you on HUD projects:

### 1-1 Davis-Bacon and Other Labor Laws

#### a. The Davis-Bacon Act (DBA)

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

*Most HUD construction work **is not** covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U.S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the **Davis-Bacon and Related Acts or DBRA**.*

#### b. The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts **except** where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

*CWHSSA does not apply to prime contracts of \$100,000 or less. In addition, some HUD projects are not covered by CWHSSA because some HUD programs only provide loan guarantees or insurance. CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g., Davis-Bacon wage rates, or HUD-determined rates for operation of public housing and Indian block grant-assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter SL-95-01, CWHSSA Coverage threshold for overtime and health and safety provisions, available on-line at the HUD Labor Relations Library at: [www.hud.gov/offices/olr/library.cfm](http://www.hud.gov/offices/olr/library.cfm))*

#### c. The Copeland Act (Anti-Kickback Act)

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally assisted project) to **kickback** (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.

**d. The Fair Labor Standards Act (FLSA)**

The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

## 1-2 Davis-Bacon Regulations

The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in **Title 29 CFR Parts 1, 3, 5, 6 and 7**. *Part 1* explains how the DOL establishes and publishes DBA wage determinations (*aka wage decisions*) and provides instructions on how to use the determinations. *Part 3* describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. *Part 5* covers the labor standards provisions that are in your contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. *Part 6* provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, *Part 7* sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

## 1-3 Construction Contract Provisions

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are often bound into the contract specifications.

**a. The Labor Standards Clauses**

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-2554, Supplementary Conditions to the Contract for Construction, which is issued primarily for FHA multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects, and the HUD-5370, General Conditions of the Contract for Construction – Public and Indian Housing program.

DOL Regulations are available on-line on the World Wide Web:  
<http://www.dol.gov/dol>

**b. Davis-Bacon Wage Decisions**

The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county

All current Davis-Bacon wage decisions can be accessed on-line at no cost at:  
[www.wdol.gov](http://www.wdol.gov)

or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved.

#### **1-4 Responsibility of the Principal Contractor**

The principal contractor (also referred to as the **prime or general contractor**) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See *Contract Administrator, below.*)

To make this Guide easier to understand, the term **“prime contractor”** will mean the principal contractor; **“subcontractor”** will mean all subcontractors including lower-tier subcontractors; and the term **“employer”** will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

#### **1-5 Responsibility of the Contract Administrator**

The **contract administrator** is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals (e.g., the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see ¶2-1, **The Wage Decision**) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see ¶2-6, **Compliance Reviews**) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. *For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Relations field staff.* But many HUD-assisted projects are administered by local contracting agencies such as Public Housing Agencies (PHAs), Indian tribes and tribally-designated housing entities (TDHEs), and States, cities and counties under HUD’s Community Development Block Grant (CDBG) and HOME programs. In these cases, the *contract administrator* will likely be local agency staff. In either case, the guidance for you remains essentially the same.

The DOL also has a role in monitoring Davis-Bacon administration and enforcement. In addition, DOL has independent authority to conduct investigations. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

# CHAPTER 2.

## How to Comply with Labor Standards and Payroll Reporting Requirements

Where to start?

Now that you know you're on a Davis-Bacon project and you know some of the legal and practical implications, what's next?

### SECTION 1 — THE BASICS

#### 2-1 The Wage Decision

Davis-Bacon labor standards stipulate the wage payment requirements for *Carpenters, Electricians, Plumbers, Roofers, Laborers, and other construction work classifications* that may be needed for the project. The **Davis-Bacon wage decision** that applies to the project contains a schedule of work classifications and wage rates that must be followed. If you don't have it already (and by you should), you'll want to get a copy of the applicable **Davis-Bacon wage decision**.

Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See ¶1-3, **Construction Contract Provisions**.

now

##### a. The Work Classifications and Rates

Wage

A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications. You'll want to make sure that the work classification(s) you need are contained in the wage decision and make certain you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (for example, residential and commercial work) and can be lengthy and difficult to read. Contact the *contract administrator* (HUD Labor Relations field staff or local agency staff) if you have any trouble reading the wage decision or finding the work classification(s) you need.

*To make reading lengthy wage decisions easier for you, the contract administrator may prepare a Project Wage Rate Sheet (HUD-4720). This Sheet is a one-page transcript that will show only the classifications and wage rates for a particular project. A blank copy of a Project Wage Rate Sheet is provided for you in the appendix. Also, a fillable version of this form is available on-line at HUDClips (see web address in the Appendix). Contact the contract administrator monitoring your project for assistance with a Project Wage Rate Sheet.*

##### b. Posting the Wage Decision

If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of a DOL poster called *Notice to All Employees* (Form WH-1321) at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The *Notice to All Employees* poster is available on-line at

HUDClips (see address in the Appendix) and can also be obtained in Spanish text through the contract administrator.

## **2-2 Additional “Trade” Classifications and Wage Rates**

**What if the work classification you need isn’t on the wage decision?** If the work classification(s) that you need doesn’t appear on the wage decision, you will need to request an **additional classification and wage rate**. This process is usually very simple and you’ll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you’ll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

### **a. Additional Classification Rules**

Additional classifications and wage rates can be approved if:

- 1)** The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the *county* where the project is located).
- 2)** The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision you can’t request another Electrician classification and rate.)
- 3)** The proposed wage rate for the requested classification “fits” with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.) And,
- 4)** The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers’ representatives, must agree with the proposed wage rate.

### **b. Making the Request**

A request for additional classification and wage rate must be made in writing through the contract administrator. (If the contract administrator is a local agency, the agency will send the request to the HUD Labor Relations staff.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.



TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**c. HUD Review**

The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/ referral letter to the DOL.

If the HUD Labor Relations staff doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the HUD Labor Relations staff will *not* approve the request. In this case, the staff will send your request to the DOL with an explanation why HUD believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

**d. DOL Decision**

The DOL will respond to HUD Labor Relations in writing about the additional classification and wage rate request. HUD Labor Relations will notify you of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision. If the DOL *does not* approve the request, you will be notified about what classification and wage rate should be used for the work in question. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.

It's always a good idea to talk to the contract administrator before submitting an additional classification and wage rate request. The contract administrator can offer suggestions and advice that may save you time and increase the likelihood that DOL will approve your request. Usually, the contract administrator can give you an idea about what the DOL will finally decide.

**2-3 Certified Payroll Reports**

You'll need to submit a weekly certified payroll report (CPR) beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

**a. Payroll Formats**

The easiest form to use is DOL's **Payroll**. A sample copy of the included in the back of this You may access a fillable the WH-347 on-line at HUDClips address in the Appendix). Also, contract administrator can provide a few copies of the WH-347 that you can reproduce.

You are *not required* to use Payroll Form WH-347. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the WH-347.

WH-347, WH-347 is Guide. version of (see web the

**b. Payroll Certifications**

The weekly payrolls are called *certified* because each payroll is signed and contains language certifying that the information is true and correct. The payroll **certification** language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347, or any other format

DOL's website has Payroll Instructions, and the Payroll Form WH-347, in a "fillable" PDF format at this address: [www.dol.gov/esa/programs/dbra/forms.htm](http://www.dol.gov/esa/programs/dbra/forms.htm) and at HUDClips.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

which contains the same certification language on the WH-347 (reverse). An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments and protect itself from financial loss should underpayments occur.

**c. “No Work” Payrolls**

“No work” payrolls may be submitted whenever there is a temporary break in your work on the project, for example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. (See *Tip Box, below, for “no work” payroll exemption!*) However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you send a note, you do not need to send “no work” payrolls.

**d. Payroll Review and Submission**

The prime contractor should **review** each subcontractor’s payroll reports for compliance **prior** to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid *and* for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator *through* the prime contractor.

**e. Payroll Retention**

Every contractor (including every other basic records such as time records, evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

If you number your payroll reports consecutively, you *do not* need to submit “no work” payrolls!

subcontractor) payrolls and cards, tax

**f. Payroll Inspection**

In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their *own* copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or from DOL.

**2-4 Davis-Bacon Definitions**

Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

**a. Laborer or Mechanic**

“Laborers” and “mechanics” mean anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, sheet metal workers, etc.), apprentices, trainees and, for CWHSSA purposes, watchmen and guards. “Laborers” and “mechanics” are the two groups of workers that must be paid not less than Davis-Bacon wage rates.

- 1) **Working foremen.** Foremen or supervisors that regularly spend **more** than 20% of their time performing construction work and do not meet the exclusions in paragraph 2 below are covered “laborers” and “mechanics” for labor standards purposes for the time spent performing construction work.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**2) Exclusions.** People whose duties are primarily administrative, executive or clerical are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc. (Contact the contract administrator if you have any questions about whether a particular employee is excluded.)

**b. Employee**

Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor worker must make sure that the wage rate paid at least as much as the classification on the wage decision for the work they perform. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and self-mechanics.

For more information about working subcontractors, ask the contract administrator or your HUD Labor Relations Field Staff for a copy of Labor Relations Letter LR-96-01, *Labor standards compliance requirements for self-employed laborers and mechanics*. Labor Relations Letters and other helpful Labor Relations publications are available at HUD’s Labor Relations web site (see the list of web site addresses in the *Appendix*).

**c. Apprentices and Trainees**

The only workers who can be paid less than the wage rate on the wage decision for their work classification are “apprentices” and “trainees” registered in approved apprenticeship or training programs, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work. Approved programs are those which have been registered with the DOL or a DOL recognized State Apprenticeship Council (SAC). Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

**1) Probationary apprentice.**

Most often, the apprentice/trainee wage rate is expressed as a series of percentages tied to the amount of time spent in the program. For example, 0-6 months: 65%; 6 months – 1 year: 70%; etc. The percentage is applied to the journeyman’s wage rate. On Davis-Bacon projects, the percentage must be applied to the journeyman’s wage rate *on the applicable wage decision* for that craft.

A

“probationary apprentice” can be paid as an apprentice (less than the rate on the wage decision) if the DOL or SAC has certified that the person is eligible for probationary employment as an apprentice.

**2) Pre-apprentice.** A “pre-apprentice”, that is, someone who is not registered in a program and who hasn’t been DOL- or SAC-certified for probationary apprenticeship is **not** considered to be an “apprentice” and must be paid the full journeyman’s rate on the wage decision for the classification of work they perform.

**3) Ratio of apprentices and trainees to journeymen.** The maximum number of apprentices or trainees that you can use *on the job site* can not exceed the ratio of apprentices or trainees to journeymen allowed in the approved program.

**d. Prevailing Wages or Wage Rates**

Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some

TOWN OF APPLE VALLEY

INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate *unless* you provide bona fide fringe benefits for your employees.

**1) Piece-work.** Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. For example, a Drywall Hanger's earnings may be calculated based upon the square feet of sheetrock actually hung, a Painter's earnings may be based upon the number of units painted. Employers may calculate weekly earnings based upon piece rates **provided** the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. *Accurate time records must be maintained for any piece-work employees.* If the weekly piece rate earnings are not sufficient, the employer must recompute weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.

**e. Fringe Benefits**

Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits **do not** include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

**Note** that the *total* hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/hour fringe benefits, you must pay no less than that total (\$15/hour) in the basic rate or basic rate plus whatever fringe benefit you may provide. You can meet this obligation in several ways: you could pay the base wage and fringe benefits as stated in the wage decision, or you could pay \$15 in base wage with no fringe benefits, or you could pay \$12 basic plus \$3 fringe benefits. You can also *off-set* the amount of the base wage if you pay more in fringe benefits such as by paying or \$9 basic plus \$6 fringe benefits; as long as you meet the total amount. The amount of the base wage that you may off-set with fringe benefits is limited by certain IRS and FLSA requirements.

**f. Overtime**

Overtime hours are defined as all hours worked on the contract in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

Referring to our example above where the wage decision requiring a \$15 total wage obligation (\$10 basic wage plus \$5 fringe benefits) was met by paying \$9 base wage plus \$6 fringe benefits: Note that overtime rates must be based on one and one-half times the basic rate *as stated on the wage decision*. In the above example, the employer must pay for overtime: \$15/hr (\$9 basic + \$6 fringe) plus \$5 (one-half of \$10, the wage decision basic rate) for a total of \$20 per hour.

**g. Deductions**

You may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission include

TOWN OF APPLE VALLEY

INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgements and other financial obligations legally imposed against the employee.

**h. Proper Designation of Trade**

You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters *even* if they aren't considered by you to be fully trained as a Carpenter. **Remember**, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.

**1) Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each work classification in which work was performed **only** if you maintain accurate time records showing the amount of time spent in each classification. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.

**i. Site of Work**

The "site of work" is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. "Site of work" can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

## SECTION II REPORTING REQUIREMENTS

### 2-5 Completing a Payroll Report

**What information has to be reported on the payroll form?**

The weekly payroll form doesn't ask for any information that you don't already need to keep for wage payment and tax purposes. For example, you need to know each employee's **name, address and social security number**; his or her **work classification** (who is working for you and what do they do?), the hours worked during the week, his or her **rate of pay**, the **gross amount earned** (how much did they earn?), the amounts of any **deductions** for taxes, etc., and the **net amount paid** (how much should the paycheck be made out for?). No more information than you need to know in order to manage your work crew and make certain they are paid properly. And, certainly, no more information

than you need to keep for IRS, Social Security and other tax and employment purposes.

**For many contractors, the Weekly Certified Payroll is the only Davis-Bacon paperwork you need to submit!**

You are required to submit certified payrolls to illustrate and document that you have complied with the prevailing

wage requirements. The purpose of the contract administrator's review of your payrolls is to verify your compliance. Clearer and complete payroll reports will permit the contract administrator to complete reviews of your payroll reports quickly.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**a. Project and Contractor/Subcontractor Information**

Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the *week dates* in the spaces provided. Numbering payrolls is optional but strongly recommended.

**b. Employee Information**

The first payroll on which each employee appears must contain the employee's name, address and Social Security Number. Afterward, the address and Social Security Number only need to be reported if there is a change in this information.

**c. Work Classification**

Each employee must be classified in accordance with the wage decision based on the type of work they actually perform.

**1) Apprentices or Trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.

**2) Split classifications.** For an employee that worked in a split classification, make a separate entry for each classification of work performed distributing the hours of work to each classification, accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

**d. Hours Worked**

The payroll should show **ONLY** the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours *should not* be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for *all projects*. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.

**e. Rate of Pay**

Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you **do not** participate in approved fringe benefit programs, **add** the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.

**1) Piece-work.** For any piece-work employees, the employer **must** compute an *effective hourly rate* for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.

The effective hourly rate must be reflected on the certified payroll and the hourly rate may be no less than the wage rate (including fringe benefits, if any) on the wage decision for the classification of work performed. It does not matter that the effective hourly rate changes from week-to-week, only that the less than the rate on the wage for the classification of work

Only one employee authorization is needed for recurring (e.g., weekly) other deductions. Written employee authorization is not required for income tax and Social Security deductions.

rate is no decision performed.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**f. Gross Wages Earned**

Show the gross amount of wages earned for work performed on this project. *Note:* For employees with work hours and earnings on other projects, you may show gross wages for this project over gross earnings all projects (for example, \$425.40/\$764.85) and base deductions and net pay on the “all projects” earnings.

**g. Deductions**

Show the amounts of any deductions from the gross earnings. “Other” deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing by the employee or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

Remember, the overtime rate is computed at one and one-half times the *basic* rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the overtime rate would be:  $(\$10 \times 1\frac{1}{2}) + \$5 = \$20/\text{hour}$ . Only one Statement of Compliance is required for each employer’s weekly payroll no matter how many pages are needed to report the employee data.

**h. Net Pay**

Show the net amount of

wages paid.

**i. Statement of Compliance**

The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (WH-347). Be sure to complete the identifying information at the top, particularly if you are attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. Also, you must check either 4(a) or 4(b) if the wage decision contains a fringe benefit. Checking 4(a) indicates that you are paying required fringe benefits to approved plans or programs; and 4(b) indicates that you are paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If you are paying a portion of the required fringe benefit to programs and the balance directly to the employee, explain those differences in box 4(c).

**j. Signature**

Make sure the payroll is **signed** with an original signature. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent.

## SECTION III PAYROLL REVIEWS AND CORRECTIONS

### 2-6 Compliance Reviews

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. The DOL may also independently conduct its own reviews (see ¶1-5). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

**a. On-Site Interviews**

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative, or HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form HUD-11, *Record of Employee Interview*, and forward the interviews to the contract administrator.

**b. Project Payroll Reviews**

The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

## **2-7 Typical Payroll Errors and Required Corrections**

The following paragraphs describe common payroll errors and the corrective steps you must take.

**a. Inadequate Payroll Information**

If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate, e.g., does not contain all of the necessary information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.

**b. Missing Addresses and Social Security Numbers**

If the first payroll on which an employee appears does not contain the employee's address and Social Security Number, the employer will be asked to supply the missing information. A short note providing the information is all that is needed.

**c. Incomplete Payrolls**

If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a corrected payroll.

**d. Classifications**

If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision **or** the employer may request an **additional classification and wage rate** (See ¶2-2). If reclassification results in underpayment (i.e., the wage rate paid on the payroll is less than the rate required for the new classification), the employer will be asked to pay **wage**



TOWN OF APPLE VALLEY

INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**restitution** to all affected reclassified employees. (See ¶2-8 for instructions about wage restitution.)

**e. Wage Rates**

If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.

**f. Apprentices and Trainees**

If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is *not* registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.

**g. Overtime**

If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur: **1)** If the project is subject to *CWHSSA overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project. The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,

**2)** If the project is **not** subject to *CWHSSA*, the employer will be notified of the possible *FLSA overtime* violations. Also, the contract administrator may refer the violations to the DOL for further review.

**h. Computations**

If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

**i. Deductions**

If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of certified payroll reports that show wages paid in gross amounts (i.e., without tax deduction) for its review and appropriate action.

**j. Fringe**

If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the Statement of Compliance], the employer may be asked to submit corrected payrolls **and** will be required to pay wage restitution if underpayments occurred. *However*, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate *plus* the fringe benefit rate), no correction is necessary.

**Benefits**

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**k. Signature**

If the payroll *Statement of Compliance* is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principal of the firm and that person has not been authorized by principal to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature(s) of a principal or other signatory.

**l. On-Site Interview Comparisons**

If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a corrected payroll report.

**2-8 Restitution for Underpayment of Wages**

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

**a. Notification to the Employer/Prime Contractor**

The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

**b. Computing Wage Restitution**

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the *adjustment rate*. The adjustment rate times the number of hours involved equals the gross amount of restitution due. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.

**c. Correction Payrolls**

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution was paid and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount actually paid. A signed Statement of Compliance must be attached to the correction payroll.

In most cases, HUD no longer requires employers to submit checks or copies of checks (certified, cashiers, canceled or other) to correct underpayments. Restitution payments are reported and certified by the employer on a correction payroll.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**d. Review of Correction CPR**

The contract administrator will review the correction certified payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a supplemental correction payroll within 30 days.

**e. Unfound Workers**

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers) providing their names, Social Security Numbers, last known addresses and the gross amount due. In such cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for 3 years after the completion of the project. After 3 years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD.

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work through the prime contractor when the issues are complex, when there are significant underpayments and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required corrective documentation.

# CHAPTER 3.

## Labor Standards Disputes, Administrative Reviews, Withholding, Deposits and Escrow Accounts, and Sanctions

**W**hat happens when things go wrong?

### 3-1 Introduction

Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, “things going wrong” usually means there’s a difference of opinion or a dispute about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before the DOL; or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of what you may expect and what you can do to make your views known and to lessen any delays in resolving the problem or issue.

### 3-2 Administrative Review on Labor Standards Disputes

As mentioned in the Introduction above, a dispute about labor standards and compliance can arise for a number of reasons. The labor standards clauses in your contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

#### a. Additional Classifications and Wage Rates

Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.

- 1) **Reconsideration.** The DOL normally identifies the reasons for denial in its response to the request. Any interested person (*for example*, the contract administrator, employer, representatives of the employees) may request reconsideration of the decision on the additional classification request. The request for reconsideration must be made in writing and must thoroughly address the denial reasons identified by the DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to the DOL. (*See ¶2-2(d), and also DOL Regulations 29 CFR 1.8.*) All requests initiated by or made through the contract administrator or HUD must be submitted through the HUD Headquarters Office of Labor Relations.

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

- 2) **Administrative Review Board.** Any interested party may request a review of the Administrator’s decision on reconsideration by **DOL’s Administrative Review Board.** DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (See also 29 CFR 1.9.)

**b. Findings of Underpayment**

Compliance reviews and other follow-up enforcement actions may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due and, of course, to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies.

If informal exchanges do not result in agreement, the final determination and schedule of back wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) or to request a hearing on the matter before the DOL. The request for hearing must be made in writing through the contract administrator and must explain what findings are in dispute and the reasons. In such cases, HUD is required to submit a report to DOL for review and further consideration. All requests for DOL hearing must be submitted through the HUD Headquarters Office of Labor Relations.

- 1) **DOL review.** The DOL will review the contract administrator’s report and the arguments against the findings presented in the hearing request. The DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by the DOL of the results of its review; you will be given an opportunity to correct any underpayments or to request a hearing before a DOL Administrative Law Judge (ALJ). (See *DOL Regulations 29 CFR 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings.*)
- 2) **Administrative Review Board.** Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

**3-3 Withholding**

The contract administrator shall cause withholding from payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor. DOL may also direct the withholding of contract payments for alleged wage underpayments. Withholding is considered to be serious and is not taken unless warranted. If withholding is deemed necessary, you will be notified in writing. Only the amounts needed to meet the contractor’s (and/or subcontractors’) liability shall be withheld.

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See ¶1-4, *Responsibility of the Principal Contractor*, and ¶2-8, *Restitution for Underpayment of Wages.*

**3-4 Deposits and Escrows**

In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow projects to proceed to final closing and payments **provided** the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

damages, if necessary, in a special account. The deposit or *escrow account* is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- a. **Where the parties have agreed to amounts of wage restitution that are due** *but* the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages, e.g., some of the workers have moved and could not be located. The amount of the deposit is equal to the total amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who can not be located are held in the deposit/escrow account for three years and disbursed as described in ¶2-8(e) of this Guide.
- b. **Where underpayments are suspected or alleged and an investigation has not yet been completed.** The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (See ¶2-8(e) and 3-4(a)).

If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained in ¶3-4(c), below.

- c. **Where the parties are waiting for the outcome of an administrative hearing** that has been or will be requested contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

### 3-5 Administrative Sanctions

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or DOL.

#### a. DOL Debarment

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (**debarred**) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or can be initiated by the DOL. Debarment proceedings are described in DOL regulations 29 CFR 5.12.

#### b. HUD Sanctions

HUD sanctions may include Limited Denials Participation (LDPs), debarments and

- 1) **LDPs.** HUD may issue to the employer a of participation (LDP) which prohibits the further participation in HUD programs for a

Remember, if you have any questions or need assistance concerning labor standards requirements help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Relations staff in your area.

of suspensions.

limited denial employer from period up to

one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDP's are found at 24 CFR 24.700-24.714.

- 2) **Debarment and suspensions.** In certain circumstances, HUD may initiate its own debarment or suspension proceedings against a contractor and/or subcontractor in connection with improper actions regarding Davis-Bacon obligations. For example, HUD may initiate debarment where a contractor has been convicted for making false statements (such as false statements on certified payrolls or other prevailing wage certifications) or may initiate suspension where a contractor has been indicted for making false statements. HUD regulations concerning debarment and suspension are found at 24 CFR Part 24.

### **3-6 Falsification of Certified Payroll Reports**

Contractors and/or subcontractors that are found to have willfully falsified payroll reports (Statements of Compliance), including correction certified payroll reports, may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison for each false statement (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

## **Acronyms and Symbols**

CDBG	– Community Development Block Grant
CFR	– Code of Federal Regulations
CPR	– Certified Payroll Report
CWHSSA	– Contract Work Hours and Safety Standards Act
DBA	– Davis-Bacon Act
DBRA	– Davis-Bacon and Related Acts
DOL	– Department of Labor
FHA	– Federal Housing Administration
FLSA	– Fair Labor Standards Act
HUD	– Housing and Urban Development (Department of)
IHA	– Indian Housing Authority
LCA	– Local Contracting Agency
LDP	– Limited Denial of Participation
O/T	– Overtime
PHA	– Public Housing Agency
S/T	– Straight-time
SAC	– State Apprenticeship Council/Agency
TDHE	– Tribally-Designated Housing Entity
§	– Section
¶	– Paragraph

## **Davis-Bacon – Related Web Sites\***

HUD Office of Labor Relations:

[www.hud.gov/offices/olr](http://www.hud.gov/offices/olr)

HUD Regulations:

TOWN OF APPLE VALLEY  
INSTALLATION OF SHADE STRUCTURES AT JAMES WOODY PARK

**[www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html)**

HUDClips (Forms and Publications):

**[www.hudclips.org/cgi/index.cgi](http://www.hudclips.org/cgi/index.cgi)**

DOL Davis-Bacon and Related Acts Homepage:

**[www.dol.gov/esa/programs/dbra/index.htm](http://www.dol.gov/esa/programs/dbra/index.htm)**

DOL Regulations:

**[www.dol.gov/dol/allcrf/Title\\_29/toc.htm](http://www.dol.gov/dol/allcrf/Title_29/toc.htm)**

Davis-Bacon Wage Decisions:

**[www.wdol.gov](http://www.wdol.gov)**

DOL Forms:

**[www.dol.gov/esa/programs/dbra/forms.htm](http://www.dol.gov/esa/programs/dbra/forms.htm)**

**\*Web addresses active as of June 2006**



# Project Wage Rate Sheet

U.S. Department of Housing and Urban Development  
Office of Labor Relations

PROJECT NAME:			WAGE DECISION NUMBER/MODIFICATION NUMBER:			
PROJECT NUMBER:			PROJECT COUNTY:			
WORK CLASSIFICATION	BASIC HOURLY RATE (BHR)	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	LABORERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Bricklayers			\$			\$
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	OPERATORS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Plumbers			\$			\$
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Layers			\$			\$
Tapers			\$			\$
Tile Setters			\$	TRUCK DRIVERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
OTHER CLASSIFICATIONS						\$
			\$			\$
			\$			\$
			\$			\$
ADDITIONAL CLASSIFICATIONS (HUD Form 4230-A)						
WORK CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	DATE OF HUD SUBMISSION TO DOL	DATE OF DOL APPROVAL	
			\$			
			\$			
			\$			
			\$			

PAYROLL

(For Contractor's Optional Use; See Instructions at [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

OMB No.: 1215-0149  
Expires: 12/31/2011

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	
PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION
		PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
			O C S	HOURS WORKED EACH DAY									FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS			
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room 83502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_;  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

## STATEMENT OF COMPLIANCE

Date \_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_ do hereby state:  
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ on \_\_\_\_\_ the:  
(Contractor or Subcontractor)

that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned that no rebates have been or will be made either directly or indirectly to or on behalf on said

\_\_\_\_\_ from the full weekly wages earned by any person and that no deductions have been made either  
(Contractor or Subcontractor)

directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as Amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

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(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United State Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll payments of fringe benefits as listed in the contract have been or will be made to appropriated programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTIONS (CRAFT)	
Remarks	
Name and Title	Signature

The wilful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See section 1001 of title 18 and section 231 of title 31 of the United States code.

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**Office of Labor Relations**  
**FEDERAL LABOR STANDARDS QUESTIONNAIRE**

**HUD FORM 4730**  
OMB Approval No. 2501-0018  
(Exp. 06/30/2007)

We are conducting a review of federal labor standards compliance on the project named below. We are asking for certain information regarding your employment on this project. Sending this questionnaire to you does not imply that your employer has violated any law.

Please respond to all of the questions listed below. Your responses will be considered confidential and will not be released to anyone without your permission. Your answers should refer only to the time during which you worked on this project. Please return the completed form as soon as possible, using the envelope provided, which needs no postage.

**If you have any questions, please call:**

<b>Employer</b>		<b>Project name, number and location</b>	
1. Your Name		2. Your Job title	
3. When did you work on this project?  <b>From:</b> _____ <b>To:</b> _____		4. Where did you work (job site, shop, etc)?	
5. What duties did you perform on this project?			
6. What tools did you use (if any) to perform your duties on the project?			
7. How were you paid? (hourly wage, salary, piece work, etc.)		8. If your wage was based on piece work, how was your pay determined (i.e., \$ per board, per unit, etc.)?	
9. What was your hourly wage on this project? \$	10a. Did you receive fringe benefits?  Yes <input type="checkbox"/> No <input type="checkbox"/>	10b. If yes, which fringe benefits did you receive? Vacation <input type="checkbox"/> Medical <input type="checkbox"/> Pension <input type="checkbox"/> Other <input type="checkbox"/> Specify:	
11. On average, how many hours did you work each week?	12. Did you ever work over 40 hours in a single week?  Yes <input type="checkbox"/> No <input type="checkbox"/>	13. If you worked over 40 hours per week, did you receive overtime pay (at least 1½ times your regular rate of pay)?  Yes <input type="checkbox"/> No <input type="checkbox"/>	14. If you did <u>not</u> receive overtime pay for overtime hours worked, identify the number of weeks in which overtime was worked and/or total overtime hours
15. Attach copies of check stubs or a record of your hours and pay received  <input type="checkbox"/> <b>CHECK IF ATTACHED</b>		16. Attach any other comments or statements on separate sheet  <input type="checkbox"/> <b>CHECK IF ATTACHED</b>	

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**Office of Labor Relations**  
**FEDERAL LABOR STANDARDS QUESTIONNAIRE**

**HUD FORM 4730**  
OMB Approval No. 2501-0018  
 (Exp. 08/30/2007)

17. Identify other employees (name, address, phone) who worked with you and who could confirm the type of work you performed

18. Identify employees (name, address, phone) you supervised

I affirm that the information provided herein is accurate to the best of my knowledge.

Employee Name (Please print clearly)	Home Phone Number (including area code)
Current address (Include apartment number, if any) (Street/City/State/Zip Code)	Alternate Phone Number(s) (including area code)
Permanent/Alternate Address (if current address is temporary)	Email address
Signature	Date

**Disclosure Authorization**

I authorize the HUD representative to disclose my name and the information I have submitted to the extent necessary to enforce my rights under the Acts administered by the U.S. Department of Housing and Urban Development.

Signature:	Date:
------------	-------

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered sensitive and will not be released without your approval. Provision of this is voluntary. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget (OMB) control number.

HUD and local agencies administering HUD-assisted programs must enforce Federal wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include contacting laborers and mechanics and requesting information about their employment on covered projects.

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**Office of Labor Relations**  
**FEDERAL LABOR STANDARDS COMPLAINT INTAKE FORM**

**HUD FORM 4731**  
OMB Approval No. 2501-0018  
 (Exp. 8/31/2010)

Name of complainant	Social Security Number
Current address of complainant (Street/City/State/Zip Code)	Permanent address, if different from current address
Telephone (including area code) (Home/Cell/Other)	E-Mail address
Project name, location and contract/project number	Prime contractor company name
Employer (company) name	Employer: name of owner/responsible party
Employer address	Employer: contact information (Telephone/Cell/Other)

**Check one:**     Current employee    Period employed on the project  
 Former employee  
 Other (specify)    From: \_\_\_\_\_ To: \_\_\_\_\_

Occupation/job title: \_\_\_\_\_

Duties performed (be specific) \_\_\_\_\_

Tools used and/or equipment operated \_\_\_\_\_

**Wage Rate: \$** \_\_\_\_\_ per     Hour     Day     Week     Piece     Other (specify): \_\_\_\_\_

**Hours usually worked on the project**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

**Usual start and stop times**    Start work time: \_\_\_\_\_    End work time: \_\_\_\_\_

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**Office of Labor Relations**  
**FEDERAL LABOR STANDARDS COMPLAINT INTAKE FORM**

**HUD FORM 4731**  
 OMB Approval No. 2501-0018  
 (Exp. 8/31/2010)

Name of complainant	Social Security Number
---------------------	------------------------

	Yes	No		Yes	No
Were meal breaks taken? If yes, how long were the breaks? _____	<input type="checkbox"/>	<input type="checkbox"/>	Did the employer keep time records?	<input type="checkbox"/>	<input type="checkbox"/>
Paid Overtime (time and ½) after 40 hours?	<input type="checkbox"/>	<input type="checkbox"/>	Did the complainant keep time records?	<input type="checkbox"/>	<input type="checkbox"/>
Paid for all hours worked?	<input type="checkbox"/>	<input type="checkbox"/>	Does complainant have other personal records (pay stubs, log books, etc.) he/she can provide?	<input type="checkbox"/>	<input type="checkbox"/>
Was/is the complainant an Apprentice?	<input type="checkbox"/>	<input type="checkbox"/>	Were fringe benefits paid?	<input type="checkbox"/>	<input type="checkbox"/>

**If fringe benefits were paid, check all that apply:**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Cash in lieu of fringe benefits | <input type="checkbox"/> Life insurance   | <input type="checkbox"/> Pension               |
| <input type="checkbox"/> Health insurance                | <input type="checkbox"/> Dental insurance | <input type="checkbox"/> Holiday/Sick/Vacation |

Identify other fringe benefits paid

Names of others affected by the alleged violation(s)

Names of others who can verify/attest to the complainant's allegations

- Continuation sheets attached  
 Complainant's personal interview attached

**Complaint taken by:**

Name (print clearly)	Phone number (including area code) and E-mail address
Title	Agency, office
<b>Signature</b>	Date

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered sensitive and will not be released without your approval. Provision of this information is voluntary. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget (OMB) control number. HUD and local agencies administering HUD-assisted programs must enforce Federal wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include collecting information from laborers and mechanics and other interested parties regarding information about their employment on covered projects.



# Project Wage Rate Sheet

U.S. Department of Housing and Urban Development  
Office of Labor Relations

PROJECT NAME:			WAGE DECISION NUMBER/MODIFICATION NUMBER:			
PROJECT NUMBER:			PROJECT COUNTY:			
WORK CLASSIFICATION	BASIC HOURLY RATE (BHR)	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	LABORERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Bricklayers			\$			\$
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	OPERATORS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Plumbers			\$			\$
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Layers			\$			\$
Tapers			\$			\$
Tile Setters			\$	TRUCK DRIVERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
OTHER CLASSIFICATIONS						\$
			\$			\$
			\$			\$
			\$			\$
ADDITIONAL CLASSIFICATIONS (HUD Form 4230-A)						
WORK CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	DATE OF HUD SUBMISSION TO DOL	DATE OF DOL APPROVAL	
			\$			
			\$			
			\$			
			\$			

PAYROLL

(For Contractor's Optional Use; See Instructions at [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



OMB No.: 1215-0149  
 Expires: 12/31/2011

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS			PROJECT AND LOCATION		PROJECT OR CONTRACT NO.	
PAYROLL NO.		FOR WEEK ENDING			PROJECT AND LOCATION		PROJECT OR CONTRACT NO.	

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	O C T O B E R	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY	FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS											
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room 33502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the \_\_\_\_\_ (Contractor or Subcontractor)

\_\_\_\_\_ ; that during the payroll period commencing on the \_\_\_\_\_ (Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full \_\_\_\_\_ (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

# FEDERAL LABOR STANDARDS PROVISIONS ITEMS REQUIRED FOR DAVIS BACON PROJECTS

## Section One

### DEPARTMENT OF LABOR WAGE RATE DECISIONS

The Department of Labor Wage Rate decision contains the specified swages by trade that must be paid to workers on all contracts in excess of \$2,000 that are financed in part by federal funds. This is sometimes referred to as the "Davis-Bacon" Law or prevailing wages. These figures are a rough equivalent to union scale. The attached General decision applies specifically to San Bernardino County, California. The decision can be modified periodically by the Department of Labor so prior to executing any contracts please inquire with this department dot determine whether any modifications have occurred.

Contractors will be responsible for identifying the appropriate trade classification for each employee working on the job site for this specific project. The employee must be paid the hourly rate and fringe benefit amounts noted. The wage determination should be posted at the job site in a prominent and accessible place where it can be easily seen by the workers.

### **Exceptions:**

1. The Department of Labor Wage Rate Decision does not apply to self-employed individuals (i.e. owners/operators of the business) or their immediate families. The contractor must complete a certification to verify exemption to this requirement (Section Ten).
2. Apprentices do not have to be paid the wages prescribed by Labor Wage Rate Decisions. However, Apprentices must be registered in a Department of Labor approved apprenticeship program.

## Section Two

### FEDERAL LABOR STANDARD PROVISIONS

Federal Labor Standard Provisions apply to any project financed in part by federal funds. The provisions as noted in HUD form 4010 (following) cover the following areas:

- A.
  1. Minimum wages
  2. Withholding
  3. Payrolls and basic records
  4. Apprentices and Trainees
  5. Compliance with the Copeland "Anti-Kickback" Requirments
  6. Subcontracts
  7. Contract Termination, debarment
  8. Compliance with Davis Bacon & related act requirements
  9. Disputes
  10. Certification of Eligibility
  11. Complaints
- B. Contract Work Hours and Safety Standards Act
- C. Health and Safety

A reference to abiding by the provisions covered in HUD form 4010 should be incorporated into any contract or subcontract. Building owners and contractors are strongly encouraged to review this documents before executing any agreement.

**Section Three**

*“EQUAL EMPLOYMENT OPPORTUNITY, “LABOR STANDARDS”,  
AND “JOB SAFETY” SITE POSTERS*

The aforementioned posters must be posted at the job site in an area that is readily viewable by the workers.

**Section Four**

*CONTRACTOR’S CERTIFICATION REGARDING LABOR STANDARDS  
AND PREVAILING WAGE REQUIRMENTS*

This form is to be completed and returned prior to a contract being executed and work commencing. This form applies to all contracts in excess of \$2,000. In the space provided for the name and address, please include the contractor’s Federal Employment Identification Number (FEIN).

Completion of this form indicates contractor’s agreement to comply with federal labor standards and prevailing wage rate laws and that reference to both will be included in all contracts and subcontracts for this project.

**Section Five**

*CERTIFICATION OF CONTRACTOR REGARDING EMPLOYMENT OPPORTUNITIES  
FOR BUSINESSES AND LOWER INCOME PERSONS*

This form must be completed and returned prior to a contract being executed and work commencing. This form must be provided for each contract in excess of \$10,000.

Completion of this form indicates that the contractor shall make a good faith effort to hire local low income individuals should the project require the addition of new employees. The information provided on the form will also be used by the Town to track the use of subcontractors on the contract.

**Section Six**

*CONTRACTOR’S SECTION 3 PLAN*

This form must be completed and returned prior to a contract being executed and work commencing. This form must be provided for each contract in excess of \$10,000.

This is a “boilerplate” plan for the contractor’s utilization of lower income residents and businesses when the project necessitates the hiring of new employees or additional subcontracting opportunities.

**Section Seven**

*SUBCONTRACTOR’S CERTIFICATION REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY*

The following form must be completed for each proposed subcontractor if the prime contract is expected to exceed \$10,000. The form should be returned prior to the execution of the subcontract and before the work commences. By completing this form the proposed subcontractor is disclosing whether they have participated on other projects which have been subject to the Equal Opportunity Clause and whether all applicable documentation was provided by the subcontractor.

## **Section Eight**

### **CERTIFICATE OF ELIGIBLE CONTRACTORS**

This form must be completed by each contractor and subcontractor o the project regardless of the amount of the contract. The completed forms must be returned for Town review and approval prior to the execution of the contract and before work commences. This form is checked against the Department of Labor's list of contractors which are debarred from participating in federally funded construction projects. If a contractor or subcontractor is included on the current "debarred" list, that contractor/subcontractor will not be permitted to participate in this project.

## **Section Nine**

### **PAYROLL FORMS AND REPORTING INSTRUCTIONS**

Each contractor and subcontractor is required to submit weekly payroll forms for the duration of the project. The contractor should only report on the workers who performed at the specific project site. The general contractor is responsible for ensuring submission of payroll records for each subcontractor as well. Contractors may use their own form or printouts provided that the required information is included. Contractor must also submit a signed copy of the certification statement on the back of the payroll form, which delineates what payroll deductions were made.

**Caution:** A contractor/subcontractor is permitted to use apprentices on the project. However, the apprentice(s) must be registered with the U.S. Department of Labors Bureau of Apprenticeship Training (BAT). Any contractor/subcontractor who plans to use apprentice(s) on this project must furnish a copy of the certificate for enrollment in the BAT program. All apprentices or trainees must be in a Department of Labor approved program in order to qualify for payment of apprentice/trainee wages.

The payrolls will be reviewed by the project coordinator to determine compliance with the appropriate Wage Rate Decision. Periodic site visits and random surveys of workers on the site will be made by Town staff to verify that workers are being paid the minimum hourly wage rate mandated by the U.S. Department of Labor. A copy of the survey form is attached. Please alert all workers on the site to be available to provide the necessary information. Care will be taken to assure discretion and not to disrupt the job site.

### **Exceptions:**

Payroll information does not have to be submitted for self-employed individuals (i.e. owners/operators of the business) or their immediate family members if they are the ones performing the site work. If this applies to any of the project contractors, a "Statement of Personally Performed Work" must be completed and returned at the close of the project (Section Ten).

## **Section Ten**

### **STATEMENT OF PERSONALLY PERFORMED WORK**

In some circumstances, a contractor who is the owner/operator of their business (or his/her immediate family) may perform all the work for a particular project themselves. When this is the case, adearence to prevailing wage rate requirements does not apply, nor is the submission of payrolls necessary. If this is applicable, the attached certification must be completed at the close of the project and submitted to the Engineering Department.

**Section Eleven**

OTHER SUBMITTALS

The following additional information must be provided to the Town Engineering Department:

1. Evidence that at least three bids were secured for each contract secured for the project.
2. A copy of each executed contract for the project.
3. A copy of each contractor's Certificate of Insurance/Workman's Compensation.
4. A copy of each contractor's performance bond (This is at the property owner's option due to the relatively small cost of some façade renovation subcontracts compared to the comparatively high cost of a performance bond; this is recommended in most cases).
5. Evidence that the contractor has been paid; this would include a copy of the final waiver of lien and canceled check (both sides).

Please submit all required material to:

Town of Apple Valley  
Economic Development Department  
Attn: Christopher Moore  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

Phone: (760) 240-7000 ext. 7921

Town of Apple Valley staff will do periodic wage rate verification interviews, time permitting. The purpose of the interviews are to do brief on-site visits to ensure that the workers on a federally-funded construction project are (1) aware that they are working on a federal funded construction project and are to be paid federal prevailing wage rates for all work performed on the project, and (2) for Town staff to learn the hourly wage rate actually being paid each worker.

The Record of Employee Interview is a form used by staff to conduct the wage rate verification interview. Wage rate interview forms will be kept in project files and are for informational purposes only. Should there be a discrepancy between the amount reported on the weekly payrolls by the contractor or subcontractor and the rate reported by the worker, staff will investigate the matter and take corrective action, if necessary.

\_\_\_\_\_  
Signature/Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company



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

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This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

a. The prospective primary participant certifies to the best of its knowledge and believe that it and its principals:

1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this application 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 (1)(b) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

b. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals: Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name \_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_



Name and Title of Authorized Representative

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Signature of Authorized Representative

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SBA Form 1623 (10-88)

## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

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

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective primary 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.

7. The prospective primary 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 agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is

erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

9. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 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.