



CARROLLTON
TEXAS

**CONTRACT DOCUMENTS
AND
SPECIFICATIONS
FOR**

CITY OF CARROLLTON

JIMMY PORTER PARK PAVILION

RFP # 15-016

**BID DUE DATE
THURSDAY, FEBRUARY 19, 2015
2:00 PM**

**BID
DETAILS
AND
FORMS**



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**CITY OF CARROLLTON, TX
JIMMY PORTER PARK PAVILLION**

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AND
SPECIFICATIONS**

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NOTE: For work not specifically identified above, Contractor shall follow the Standard Specifications and Drawings found in the Public Works Construction Standards, October 2004 Edition as published by the North Central Texas Council of Governments.

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ADVERTISEMENT FOR PROPOSALS

Sealed proposals, addressed to the City of Carrollton, will be received at the offices of the Purchasing Manager, Carrollton City Hall, 1945 E. Jackson Rd, Carrollton, Texas 75006, until 2:00 p.m. on Thursday, February 19, 2015 @ 2:00 PM for the following work:

REQUEST FOR PROPOSAL #15-016 FOR CITY OF CARROLLTON, TX JIMMY PORTER PARK PAVILION

The submitted proposals will be publicly opened on Thursday, February 19, 2015 @ 2:00 PM at the place designated for submission of proposals.

Work of this contract is described as all activities necessary for the purchase and installation of a steel pavilion, concrete foundation, stone column bases, concrete sidewalk and topsoil.

Project is known as the "City of Carrollton Jimmy Porter Park Pavilion" located at 4220 N. Josey Lane in Carrollton, Texas, for the CITY.

Construction services for this project will be selected through competitive sealed proposals in accordance with Chapter 2267, Subchapter D of the Texas Government Code. The City will evaluate and rank the contractor based on the following selection criteria: 60% proposed price; 35% contractor qualifications; and, 5% proposed construction time. The City shall select the contractor that offers the best value as determined by the selection criteria and ranking evaluation. The estimated total budget for this project is \$75,000.

Information concerning the bid specifications may be obtained by calling Bobby Brady, Parks Manager, 972-466-9818 or bobby.brady@cityofcarrollton.com.

Information on the bid specifications and process/procedures may be obtained from Vince C. Priolo, Purchasing Manager at (972) 466-3115 or vince.priolo@cityofcarrollton.com.

Instructions to Proposers, Proposal Forms, Specifications, and Contract Documents may be examined without charge at the offices of the Purchasing Manager, City Hall, 1945 E. Jackson Rd, Carrollton, Texas 75006. Construction documents are available only at www.cityofcarrollton.com/purchasing, then click on Current Bids.

A pre-construction meeting will be held at Jimmy Porter Park on March 4, 2015 at 2:00 pm with the contractor chosen for this award. This is subject to change and City Council approval.

CITY OF CARROLLTON, TEXAS

PLEASE NOTE:

THIS PROJECT IS SUBJECT TO THE DAVIS-BACON ACT AND AS SUCH CERTAIN FEDERAL GUIDELINES MUST BE FOLLOWED. THOSE GUIDELINES ARE AT THE BOTTOM OF THIS DOCUMENT.

PROPOSAL OF BIDDERS

The following Request For Proposal (RFP) is made for furnishing the materials/services for the city of Carrollton, Texas. The term bid and RFP are used interchangeably in this document.

The undersigned declares that the amount and nature of the materials/services to be furnished is understood and that the nature of this bid is in strict accordance with the conditions set forth and is a part of this bid, and that there will at no time be a misunderstanding as to the intent of the specifications or conditions to be overcome or pleaded after the bids are opened.

The undersigned, in submitting this bid, represents that they are an equal opportunity employer, and will not discriminate with regard to race, religion, color, national origin, age or sex in the performance of this contract.

The undersigned hereby proposes to furnish the items on, F.O.B. Carrollton, Texas, freight prepaid at the unit prices quoted herein after notice of bid award.

The undersigned affirms that they are duly authorized to execute this contract that this company, corporation, firm, partnership or individual and has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this bid.

Jimmy Porter Park Pavilion
RFP #15-016

Respectfully Submitted,

Federal ID Number: _____

SIGNATURE

Please submit a copy of your company's W-9

DATE

PRINTED NAME

TITLE

COMPANY NAME

CONTACT PERSON (Must have knowledge of Bid)

BILLING ADDRESS

STREET

CITY STATE ZIP

MAILING ADDRESS

STREET

CITY

STATE

ZIP

PHONE NUMBER (metro/toll free)

FAX NUMBER

E-

MAIL ADDRESS

NO BID: If response is not received in the form of a "Bid" or "No Bid" bidder will be removed from bid list. Please give a specific reason as to why you are unable to bid, i.e.: we do not sell the required product/service.

No bids may be faxed to: 972-466-3175

INSTRUCTIONS TO PROPOSERS

Proposers must submit, with their proposals, a cashier's or certified check in the amount of five percent (5%) of the maximum amount Proposal, payable without recourse to the City of Carrollton, Texas or a Bid/Proposal Bond on the City's attached form in the same amount from an approved Surety Company (according to the latest list of companies holding certificates of approval by the State Board of Insurance under 7.19-1 of the Texas Insurance Code) as guarantee that the Proposer will enter into a contract and execute bond and guarantee forms provided within ten (10) calendar days after award of contract to him.

The successful Proposer must furnish Performance, Maintenance and Payment Bonds each in the amount of 100% of the contract price from an approved Surety Company holding a permit from the State of Texas, to act a Surety and acceptable (according to the latest list of companies holding certificates of approval by the State Board of Insurance under 7.19-1 of the Texas Insurance Code) on the City's attached forms. The successful Proposer must also be able to show evidence that it is authorized to do business in the State of Texas prior to executing the contract.

All blanks on the Proposal Form must be completed and all subtotal and total prices must be stated in both script and figures where indicated. The City reserves the right to reject any or all proposals and to waive formalities. In case of ambiguity or lack of clearness in stating the price in the Proposals, the City reserves the right to consider the most advantageous construction thereof, or to reject the proposal. Unreasonable or unbalanced unit price will be considered sufficient cause of rejection of any Proposal.

Proposers shall have performed similar scope of work within the past three years. Proposers are expected to inspect the site of the work, and to inform themselves regarding local conditions and conditions under which the work is to be done. Attention is called to the provisions of the Acts of the 43rd Legislature of the State of Texas and subsequent amendments concerning the wage scale and payment of prevailing wages specified. Prevailing wage rate will be established by the City of Carrollton for this project. All Proposers must comply with the rules and regulations for the Americans with Disabilities Act of 1990.

CONDITIONS OF SITE AND WORK

Proposers should carefully examine the Plans, Specifications and other construction documents, visit the site of the work, and fully inform themselves as to all conditions and matters which can in any way affect the work or costs thereof. Should a Proposer find discrepancies in, or omissions from the drawings, specifications or other Contract Documents, or should Proposer be in doubt as to the meaning and intent, Proposer should notify the City at once and obtain clarification prior to submitting a Proposal. The submission of a Proposal by Proposer shall be conclusive evidence that the Proposer is fully acquainted and satisfied as to the character, quality and quantity of work to be performed and materials to be furnished.

**CITY OF CARROLLTON, TX
JIMMY PORTER PARK PAVILION**

PROJECT SCHEDULE

Advertisement for Proposal to Appear	Sunday, February 1, 2015
	Sunday, February 8, 2015
Open Proposals	Thursday, February 19, 2012 @ 2:00 PM
Council Awards Contract*	March, 2015
Start Construction (no later than)*	TBD
Finish Construction (no later than)*	TBD

**Council award and resulting start date contingent on Council meeting. Actual completion date contingent upon construction time presented in proposal.*

**BID PROPOSAL
FOR
CITY OF CARROLLTON
JIMMY PORTER PARK PAVILION**

February 19, 2015

TO:

The Honorable Mayor and City Council
City of Carrollton
City Hall
Carrollton, Texas

Ladies and Gentlemen:

Pursuant to the foregoing Advertisement for Proposals and General Information, the undersigned Proposer having visited the sites of the proposed construction, and having familiarized himself with the local conditions affecting the cost of the work and with all addenda to the said documents hereby proposes to do all the work and to furnish all necessary superintendence, labor, machinery, equipment, tools, materials, facilities, and incidentals, and to complete all the work upon which he bids, as provided by the attached specifications and shown on the plans and binds himself, on the acceptance of the proposal to execute a contract and bond, according to the accompanying forms, for performing and completing the said work within the required time and furnish all required guarantees, for the following prices to-wit:

CONTRACTOR'S QUALIFICATION INFORMATION

1. All contractors shall complete and deliver to Engineering, the following documents:
 - a) Qualification Statement of CONTRACTOR
 - b) CONTRACTOR's List of Proposed Sub-Contractors
 - c) Reference Statement of CONTRACTOR's Surety.
 - d) Insurance Requirement Affidavit
 - e) CONTRACTOR's Release of Qualification Information.
 - f) Current Financial Statement submitted by the sole proprietor, partnership, or corporation (Supplied by the CONTRACTOR).

*All documents shall be delivered to the Purchasing Dept as a single complete package with the proposal, hereafter referred to as the Contractor's Qualification Information (CQI). No one form or statement of the CQI will be accepted individually. The Contractor's Qualification Information is due **NO LATER THAN** the proposal due date with all other required documents.*

2. Qualification forms shall be completed as presented. Additional information may be included as attachments to the end of the questionnaire in your behalf. However, attachments are not accepted as substitutions to any qualification forms.
3. All prospective contractors shall submit evidence that they have a practical knowledge of the particular work in this project and that they have the financial resources to complete the proposed work.

In determining the Contractor's qualifications, the following factors will be considered: firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, safety record and other appropriate factors submitted by the firm in response to the request for qualifications. Cost-related or price-related evaluation factors are not permitted.

4. In the event of incomplete, inaccurate or missing forms, the City has the right to declare the vendor non-responsible and award the contact the next responsible proposer meeting the qualifications.
5. **SUBSTITUTION OF PROJECT MANAGER OR PROJECT SUPERINTENDENT LISTED HEREIN WITHOUT EXPRESSED PRIOR PERMISSION FROM THE CITY IS NOT PERMITTED AND MAY BE CONSIDERED GROUNDS FOR DISQUALIFICATION DURING SELECTION or BREACH ONCE THE CONTRACT IS EXECUTED.**

QUALIFICATION STATEMENT OF CONTRACTOR

CONTRACTOR FIRM NAME: _____

Circle One: Sole Proprietor Partnership* Corporation Joint Venture*

**If partnership or Joint Venture, complete this sheet for all partners*

Contact Person Name: _____

Title: _____

Local Address: _____

Local City, State Zip: _____

Phone (Office): _____

Phone (Mobile): _____

Email: _____

Principal Place of Business:

_____ State _____ County

If the CONTRACTOR is a corporation, fill out the additional following:

State and County of Incorporation: _____

Location of Principal Office: _____

Contact Person(s) at Office: _____ Phone: _____

List of Officers of the Corporation and person(s) authorized to execute Contracts on Behalf of the Corporation:

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____

Contractor's Company History

How many years has your organization been in business as a General Contractor? _____

Greatest number of contracts in excess of \$500,000 under construction at one time in company's history: _____

Total approximate dollar value of incomplete work outstanding: \$ _____

Approximate percent of total contract work (excluding general conditions) to be self-performed by General Contractor's own forces on this project: _____

Has your organization ever contracted (as prime or sub) with the City of Carrollton on any construction project? _____ (If yes, please list below or attach description)

Approximate number of projects and dollar amount of work completed for the City of Carrollton by General Contractor's current organization as prime within the past five years:

In the past three years, has your organization been involved (directly or indirectly) in any project related litigation? _____ (If yes, please attach explanation)

Has your organization ever been involved (directly or indirectly) in any litigation involving the City of Carrollton? _____ (If yes, please attach explanation)

Have you or any present partner(s) or officer(s) failed to complete a contract for reasons related to performance? _____

If so, name of owner and/or surety:

Contact Person: _____ Phone: _____

List any unsatisfied demands upon you as to your accounts payable, please use attachments.

Project Management

Proposed Project Manager: _____

Years total experience: _____ Years with the company: _____

Years managing this particular type of project: _____ How many projects? _____

Proposed PM's roll/title in any complete or incomplete project listed in the following sections:

Project	Roll/Title	Value of Work	Date

Will the PM manage other construction projects concurrently with this project? _____

Will the PM be on-site full time (If, No, complete the following)? _____

Project Superintendent

Proposed Project Superintendent: _____

Years total experience: _____ Years with the company: _____

Years managing this particular type of project: _____ How many projects? _____

Proposed superintendent's roll/title in any complete or incomplete project listed in the following sections:

Project	Roll/Title	Value of Work	Date

Will the PS manage other construction projects concurrently with this project? _____

Will the PS be on-site full time? _____

Any references on the following pages that do not include current and complete contact information will be omitted from consideration for selection.

Provide the following information for each relevant project CONTRACTOR has completed in the last three years:

Project: _____

Owner: _____

Owner Contact Person: _____ Phone: _____

Designer Contact Person: _____ Phone: _____

Project Manager: _____ Project Superintendent: _____

Contract Price: _____ Start Date: _____ Finish Date: _____

Description of Work: _____

Project: _____

Owner: _____

Owner Contact Person: _____ Phone: _____

Designer Contact Person: _____ Phone: _____

Project Manager: _____ Project Superintendent: _____

Contract Price: _____ Start Date: _____ Finish Date: _____

Description of Work: _____

Project: _____

Owner: _____

Owner Contact Person: _____ Phone: _____

Designer Contact Person: _____ Phone: _____

Project Manager: _____ Project Superintendent: _____

Contract Price: _____ Start Date: _____ Finish Date: _____

Description of Work: _____

RELATIVE EXPERIENCE (cont)

Project: _____

Owner: _____

Owner Contact Person: _____ Phone: _____

Designer Contact Person: _____ Phone: _____

Project Manager: _____ Project Superintendent: _____

Contract Price: _____ Start Date: _____ Finish Date: _____

Description of Work: _____

Project: _____

Owner: _____

Owner Contact Person: _____ Phone: _____

Designer Contact Person: _____ Phone: _____

Project Manager: _____ Project Superintendent: _____

Contract Price: _____ Start Date: _____ Finish Date: _____

Description of Work: _____

Project: _____

Owner: _____

Owner Contact Person: _____ Phone: _____

Designer Contact Person: _____ Phone: _____

Project Manager: _____ Project Superintendent: _____

Contract Price: _____ Start Date: _____ Finish Date: _____

Description of Work: _____

(Use Attachments at the end of the CQI If Necessary)

Provide the following information for any incomplete project regardless of date:

Project & Owner: _____

Owner/Engineer Contact Person: _____ Phone: _____

Contractor's role (prime/sub w/ description): _____

Dollar Value of Incomplete Work: _____ Contract Price: _____

Is project on schedule? _____ (if No, please provide explanation)

Project & Owner: _____

Owner/Engineer Contact Person: _____ Phone: _____

Contractor's role (prime/sub w/ description): _____

Dollar Value of Incomplete Work: _____ Contract Price: _____

Is project on schedule? _____ (if No, please provide explanation)

Project & Owner: _____

Owner/Engineer Contact Person: _____ Phone: _____

Contractor's role (prime/sub w/ description): _____

Dollar Value of Incomplete Work: _____ Contract Price: _____

Is project on schedule? _____ (if No, please provide explanation)

Project & Owner: _____

Owner/Engineer Contact Person: _____ Phone: _____

Contractor's role (prime/sub w/ description): _____

Dollar Value of Incomplete Work: _____ Contract Price: _____

Is project on schedule? _____ (if No, please provide explanation)

Project & Owner: _____

Owner/Engineer Contact Person: _____ Phone: _____

Contractor's role (prime/sub w/ description): _____

Dollar Value of Incomplete Work: _____ Contract Price: _____

Is project on schedule? _____ (if No, please provide explanation)

Bank Reference:

Bank: _____ City: _____
Address: _____ Phone: _____
Contact Officer: _____

Other Credit References:

Name: _____	Name: _____
Address: _____	Address: _____
City: _____	City: _____
Phone: _____	Phone: _____

Municipal Reference:

City: _____	
Contact Person: _____	Title: _____
Address: _____	Phone: _____
City: _____	
Contact Person: _____	Title: _____
Address: _____	Phone: _____

Other than that already provided, please list any other relevant or innovative construction equipment, methods or materials that you might propose to ensure the successful completion of this project:

CONTRACTOR'S LIST OF PROPOSED SUB-CONTRACTORS

Sub-Contractor's Name*	Type of Work to be Performed	Approx. % of total const. work	Teamed with before? (y/n)

*Contractor shall notify the City in writing prior to any change in sub-contractor

REFERENCE STATEMENT OF CONTRACTOR'S SURETY
(To be completed and signed only by the Surety)

CONTRACTOR: _____

Address: _____

1. For this CONTRACTOR, how many contracts **that are now complete** has this surety furnished contract bonds? _____
2. For this CONTRACTOR, how many **incomplete contracts** has this surety furnished contract bonds? _____
3. What is the maximum bonding capacity of this CONTRACTOR? \$ _____
4. Does the current financial information on this CONTRACTOR indicate solvency and a financial ability to complete this contract? _____

5. Does the information available to this surety indicate that the Contractor pays accounts when due? _____ If not, give details:

6. Is it the surety's opinion that the CONTRACTOR has sufficient experience and financial resources to satisfactorily perform the contract? _____
7. Provided this CONTRACTOR does not assume other commitments or that this surety does not acquire further information that in your opinion will materially affect the CONTRACTOR's capacity to perform this contract, will you furnish the bonds as specified? _____

REMARKS:

Surety: _____

Signed: _____ (Local office in Dallas County)

Title: _____

Address: _____

City State Zip

Phone: _____

CONTRACTOR'S RELEASE OF QUALIFICATION INFORMATION

For types of work outlined in Qualification Statement of CONTRACTOR, the undersigned is submitting information as required with the understanding that the purpose is for the City's confidential use, only to assist in determining the qualifications of CONTRACTOR's organization to perform the type and magnitude of work designated, and further, CONTRACTOR guarantees the truth and accuracy of all statements made, and will accept the City's determination of qualifications without prejudice. The surety herein names, any other bonding company(s), bank(s), subcontractor(s), supplier(s), or any other person(s), firm(s) or corporation(s) with whom CONTRACTOR has done business, or who have extended any credit to CONTRACTOR is (are) hereby authorized to furnish the City with any information the City may request concerning performance on previous work and CONTRACTOR's credit standing with any of them; and CONTRACTOR hereby releases any and all such parties from any legal responsibility whatsoever on account of having furnished such information to the City:

Signed: _____ Title: _____

CONTRACTOR: _____ Date: _____

CITY OF CARROLLTON, TEXAS

CONTRACT AGREEMENT

STATE OF TEXAS)

COUNTY OF DALLAS)

THIS AGREEMENT, made and entered into this ___ day of _____ A.D., _____ by and between the City of Carrollton, a municipal corporation, located in the County of Dallas and State of Texas, acting through Marc Guy, its Assistant City Manager, thereunto authorized so to do hereafter termed OWNER, and _____, County of _____, and State of _____, hereinafter termed CONTRACTOR.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, and under the conditions expressed in the bond bearing even date herewith, the said CONTRACTOR, hereby agrees with the OWNER to commence and complete the construction of certain improvements described as follows:

**CITY OF CARROLLTON RFP #15-016
JIMMY PORTER PARK PAVILION**

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at CONTRACTOR'S own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Advertisement for Proposal, General and Special Conditions of Agreement, Plans, Specifications and other documents and printed or written explanatory matter thereof, and addenda thereof, together with the CONTRACTOR'S written proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten calendar (10) days after the date of written notice to do so shall have been given him, and to be 100% complete within **Ninety (90)** calendar days after the date of the written Notice to Proceed work, subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the Contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day above written.

The City of Carrollton _____
Owner

Contractor

By: _____
Signature

By: _____
Signature

Erin Rinehart, Assistant City Manager
Print Name & Title

Print Name & Title

ATTEST:

Krystle Nelinson, City Secretary

Date: _____
By Authority of Council Action

Approved as to Form:

Meredith Ladd,
City Attorney

CONTRACTOR'S BID & PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS,

That we _____, Principal, and _____, a corporation duly organized under the laws of the State of Texas, and authorized to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the City of Carrollton, owner, in the sum of _____ dollars (\$_____) for the payment of which sum we will bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit a bid or proposal to Owner to enter a contract as defined by Ch 2267, Subchapter D of the Texas Government Code for:

**CITY OF CARROLLTON
JIMMY PORTER PARK PAVILION**

NOW, THEREFORE, if the Owner shall accept the bond of the Principal and the Principal shall enter into a contract with the Owner in accordance with the terms of such bid or proposal, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, then this obligation shall be null and void, otherwise to remain in full force and effect and the amount hereof shall be paid to and retained by Owner as liquidated damages for Principal's failure to do so.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representatives of the Principal and the Surety.

Signed and sealed this _____ day of _____, _____.

Principal

By: _____

(NAME OF SURETY)

By: _____

Attorney-in-Fact

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of Texas, as principal, and _____ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the **City of Carrollton, Texas** (Owner), in the sum of _____ dollars (\$ _____) as an appropriate measure of liquidated damages for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, _____, for the **CITY OF CARROLLTON JIMMY PORTER PARK PAVILION** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall faithfully perform the work in accordance with the plans, specifications, and contract documents and shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Principals default, and reimburse and repay Owner all outlay and expense which Owner may incur in making good such default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as currently amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specification, or drawings accompanying the same, 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 addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this day of _____, _____.

Principal

Surety

By: _____

By: _____
Print or Type Name

Title: _____

Title: _____

Address: _____

Address: _____

The name, address and telephone number of the Resident Agent of Surety is: _____

PAYMENT BOND

STATE OF TEXAS §

COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of Texas, as principal, and _____ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the **City of Carrollton, Texas** (Owner), in the sum of _____ dollars (\$_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, _____, for the **CITY OF CARROLLTON JIMMY PORTER PARK PAVILION** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal and its subcontractors shall well and faithfully make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supply labor or materials in the prosecution of the work under the contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as currently amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this day of _____, _____.

Principal

Surety

By: _____

By: _____

Print or Type Name

Title: _____

Title: _____

Address: _____

Address: _____

The name, address and telephone number of the Resident Agent of Surety is: _____

MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of Texas, as PRINCIPAL, and _____ fully authorized to transact business in the State of Texas, as Sureties, do hereby expressly acknowledge ourselves to be held and bound to pay unto the City of Carrollton, Texas, hereinafter called CITY, a municipal corporation organized and existing under the laws of Texas, at Carrollton, Dallas County, Texas, the sum of _____ (\$ _____) in lawful money of the United States, for the payment of which sum will and truly to be made unto said City of Carrollton, and its successors, said PRINCIPAL AND SURETIES do hereby bind ourselves, our heirs, executors, administrators, their assigns and successors, jointly and severally, firmly by these presents. This bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decreases the sum of this Bond.

THIS obligation is conditioned, however, that whereas said _____ has this _____ day of _____, _____, entered into a written Contract with the said CITY to build and construct **CITY OF CARROLLTON JIMMY PORTER PARK PAVILION**, located in the City of Carrollton, Texas, which Contract and the Plans and Specifications therein mentioned adopted by the CITY, are hereby expressly made a part thereof as though the same were written and embodied herein.

WHEREAS, said Contract was entered into pursuant to the requirements of the CITY, and

WHEREAS, in said Contract, PRINCIPAL binds itself to use of materials and methods of construction such that all improvements including but not limited to **CITY OF CARROLLTON JIMMY PORTER PARK PAVILION** will be initially completed free of perceptible defects and will remain in good repair and condition and free of perceptible defects for and during the period of two (2) years after the date of acceptance of the completed improvements by the CITY, and

WHEREAS, said PRINCIPAL binds itself to construct said improvements in such a manner and obtain inspection approvals in proper sequence as are required to obtain acceptance by the CITY and to repair or reconstruct the said improvements in whole or in part at any time within said two (2) years period to such an extent as the CITY deems necessary to properly correct all defects except those which have been caused by circumstances and conditions occurring after the time of construction over which the PRINCIPAL had no control and which are other than those arising from defect of construction by the PRINCIPAL; and,

WHEREAS, after the acceptance of the improvements by the CITY, said PRINCIPAL binds itself, upon receiving notice from the CITY of the need thereof to repair or reconstruct said improvements and if the PRINCIPAL fails to make the necessary corrections, within ten (10) days after being notified, the CITY may do or have done all said corrective work and shall have recovery hereon for all expenses thereby incurred.

WHEREAS, under the Plans and Specifications, and Contract, it is provided that the PRINCIPAL will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of acceptance; it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work, or labor performed by said PRINCIPAL; and in case the said PRINCIPAL shall fail to do so, within ten (10) days after being notified, it is agreed that the CITY may do said work and supply such materials, and charge to same against the said PRINCIPAL AND SURETIES, on this obligation, and said PRINCIPAL AND SURETIES hereon shall be subject to the liquidated damages mentioned in said contract.

NOW THEREFORE, if the said PRINCIPAL, shall keep and perform its said agreement to maintain said work and keep the same in repair for the said maintenance period of two (2) years, as provided, then these presents shall be null and void, and have no further effect, but if default shall be made by the said PRINCIPAL in the performance of his contract to so maintain and repair said work, then these presents shall have full force and effect, and said CITY shall have and recover from said PRINCIPAL and SURETIES damages in the premises, as provided, and it is further agreed that this obligation shall be a continuing one against the PRINCIPAL and SURETIES hereon, and that successive recoveries may be had thereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Dallas County, State of Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in anyway affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

This Bond complies with the provisions of Chapter 2253, Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident agent in Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, the said _____ has caused these presents to be executed by them; and the said _____ has caused these presents to be executed by its ATTORNEY-IN-FACT _____ and the said ATTORNEY-IN-FACT _____ has hereunto set his hand this the _____ day of _____, _____.

Principal

Surety

By: _____

By: _____
Print or Type Name

Title: _____

Title: _____

Address: _____

Address: _____

The name, address and telephone number of the Resident Agent of Surety is: _____

**GENERAL CONDITIONS FOR
CONSTRUCTION CONTRACT**

CITY OF CARROLLTON

**GENERAL CONDITIONS
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GENERAL CONDITIONS

1. CONTRACT DOCUMENTS

It is understood and agreed that the Advertisement for Bids, Instructions to Bidders, Proposal, Proposal Data, Contract Agreement, Owner's Purchase Order, Owner's Resolution, Performance Bond, Payment Bond, General Conditions, Special Conditions, Specifications, Council of Governments Standard Specifications for Public Works, (current edition), Drawings, Addenda, and Change Orders issued by the Owner, specifications, and engineering data furnished by the Contractor and accepted by the Owner, are contract documents. Additionally, any other written instruments, correspondence, etc., bound in the volume of the contract documents at the time of execution by the Owner and Contractor shall be "contract documents" whether specifically designated as such or otherwise.

It is the intent of the contract documents that they be read as a whole and that all portions of the contract be interpreted so as to give meaning to their terms. In the event of any conflict in the contract documents, handwritten provisions shall prevail over typewritten and typewritten provisions shall prevail over preprinted matter. Additionally, the following order of precedence shall govern among the various contract documents, with the first listed having precedence over any documents listed thereafter.

- Scope of Work
- Contract Agreement
- Owners Resolution
- Addenda to Contract Conditions and Specifications "and Plans"
- Special Conditions
- General Conditions
- Technical Specifications
- Contract Conditions
- Contract Drawings
- All other Contract Documents
- General Design Standards
- Facility Services General Building Standards
- North Central Texas Council of Governments Standard Specifications for Public Works

The City reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work, and where required, shall properly connect and coordinate his work with theirs.

1.1 NO PREJUDICE AGAINST OWNER

It is understood and agreed by Contractor that Owner has independently prepared most of the Contract Documents and Contractor agrees that, notwithstanding any doctrine of law to the contrary, no presumption and/or prejudice against Owner shall be presumed against

Owner (nor construed in favor of Contractor) by any court of competent jurisdiction in its interpretation of the Contract Documents.

2. DEFINITIONS

Words, phrases, or other expressions used in these contract documents shall have meanings as follows:

- a. "Contract", "contract", or "contract documents" shall include the items enumerated above under CONTRACT DOCUMENTS.
- b. "Owner", "Agency", or "Inspector" shall mean the City of Carrollton, named and designated in the Contract Agreement. All notices, letters, and other communication directed to the Owner shall be addressed and delivered to:

City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

Attn: Purchasing Department

- c. "Contractor" shall mean the corporation, company, partnership, firm, or individual named and designated in the Contract Agreement, who has entered into this contract for the performance of the work covered thereby, and its, his, or their duly authorized representatives or its successors to the contract.
- d. "Subcontractor" shall mean and refer only to a corporation, partnership, or individual having a direct contract with the Contractor for performing work covered by these contract documents, or its successors to the contract.
- e. "Date of contract", or equivalent words, shall mean the date written on the Owner's Resolution, or the Owner's Purchase Order if a Resolution is not required, which shall also be the date written in the first paragraph of the Contract Agreement.
- f. "Day" or "days", unless herein otherwise expressly defined, shall mean a calendar day or days of 24 hours each.
- g. "The work" shall mean the equipment, supplies, materials, labor, and services to be furnished under the contract and the carrying out of all obligations imposed by the contract documents.
- h. "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner or Engineer as a basis for proposals, (b) supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the contract drawings and specifications, (c) drawings submitted by the successful bidder with his proposal, provided such drawings are acceptable to the Owner, (d) drawings

furnished by the Owner to the Contractor during the progress of the work, and (e) engineering data and drawings submitted by the Contractor during the progress of work.

- i. Whenever in these contract documents the words "as ordered", "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it shall be understood that the order, direction, requirements, permission, or allowance of the Owner is intended only to the extent of judging compliance with the terms of the contract; none of these terms shall imply that the Owner has any authority or responsibility for supervision of the Contractor's forces or construction operations, such supervision and the sole responsibility therefor being strictly reserved for the Contractor.
- j. Similarly the words "approved", "reasonable", "suitable", "acceptable", "proper", "satisfactory", or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgement of the Owner, to the extent provided in "i" above.
- k. Whenever in these contract documents the expression "it is understood and agreed" or an expression of like import is used, such expression shall mean the mutual understanding and agreement of the parties executing the Contract Agreement.
- l. "Official Acceptance" shall mean the Owner's written acceptance of all work performed under this Contract.

3. CONTRACTOR'S PRELIMINARY OBLIGATION

It is the responsibility of the bidder to deliver his proposal at the proper time and to the proper place. The proposal shall be delivered in a manila envelope with the appropriate job name on the outside. The mere fact that a proposal was dispatched by mail, express, or otherwise, will not be considered. The bidder must have his proposal in the hands of the proper official before closing time. Bids received after the advertised closing time will not be considered and will be returned unopened.

The Contractor, as successful bidder, shall furnish the required payment, performance and maintenance bond each in the amount of 100% of the contract price, a valid power-of-attorney proving the agent has the authority to execute the bonds for the surety, and certificates of insurance and an executed contract, within (10) days of notice of award. A certified copy of the Board Resolution authorizing said persons to sign and bind the firm must be included with each copy of the Contract. If such Contractor fails to enter into a contract or execute bonds as herein provided, the City may annul the award and award the contract to the bidder whose proposal was next most acceptable and the Contractor shall execute contract and bond as herein provided. The bidder to whom the first award was made shall then forfeit the bid security submitted with his proposal.

The official form of contract will be executed in seven copies. Two executed copies of the official contract documents and specifications (project manual) will be returned to the Contractor after the contracts and bonds have been approved and executed by the Owner. In addition to the two executed copies of the project manual, the Contractor will be furnished without charge two "field copies" of the plans. Additional sets may be obtained from the engineer at the cost of reproduction.

These additional plans are to be stamped approved by the Owner before they can be used on the project.

4. LEGAL ADDRESSES

All notices, letters, and other communications to the Contractor will be mailed or delivered to either the contractor's business address listed in the Proposal or the contractor's office in the vicinity of the work, with delivery to either of these addresses being deemed as delivery to the Contractor. The addresses of the Owner appearing on page 2 are hereby designated as the place to which all notices, letters, and other communication to the Owner shall be mailed or delivered. Either party may change his address at any time by an instrument in writing delivered to the Owner and to the other party.

5. SCOPE AND INTENT OF CONTRACT DOCUMENTS

It is the intent of the construction documents to achieve a satisfactorily sound and quality finished product. The specifications and drawings are intended to supplement but not necessarily duplicate each other. Any work exhibited in the one and not the other shall be executed as if it had been set forth in both, so that the work will be constructed according to the complete design as determined by the Owner.

Should anything necessary for a clear understanding of the work be omitted from the specifications and/or drawings, or should the requirements appear to be in conflict, the Contractor shall secure written instructions from the Owner before proceeding with the work affected thereby. It is understood and agreed that the work shall be performed accordingly to the true intent of the contract documents.

Owner disclaims to Contractor any express or implied warranties that the specifications and/or drawings included in the Contract Documents are accurate and sufficient for purpose of completing the work according to the terms of this Agreement.

6. INDEPENDENT CONTRACTOR

The relationship of the Contractor to the Owner shall be that of an independent Contractor. Owner and Contractor agree that the negotiation, preparation and execution of the Contract Documents were negotiated, prepared, and executed as part of an arms-length transaction, and that no duty of good faith and fair dealing exists between Owner and Contractor, now, in the future, nor at any time in the past. The Owner shall not have the right to control the day to day activities of how the Contractor performs the work, being interested only in the results to be achieved.

7. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign or subcontract the work or any part thereof, without the previous written consent of the Owner, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the Owner has been obtained. No right under this contract, nor claim for any money due or to become due hereunder shall be asserted against the Owner, or person acting for the Owner, by reason of any so called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the Owner. In case the Contractor is permitted to assign moneys due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of the work.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the Contractor upon notice from the Owner. The Contractor shall be as of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Owner.

It is the intent of these specifications that the Contractor shall perform the majority of the work with his own forces and under the management of his own organization. Only subcontractors who have been listed in the proposal and who are accepted by the Owner as provided in the General Conditions may subcontract specific portions of the work. All subcontractors shall be directly responsible to the Contractor and shall be under his general supervision. All work performed under subcontracts shall be subject to the same contract provisions as the work performed by the contractor's own forces.

This Contract is considered personal between the Contractor and Owner therefore, any sale of more than 50% ownership of Contractor shall be considered as an assignment.

8. ORAL STATEMENTS

It is understood and agreed that the written terms and provisions of this agreement shall supersede all oral statements of representatives of the Owner, and oral statements shall not be effective or be construed as being a part of the contract.

9. REFERENCE STANDARDS AND LAWS AND REGULATIONS

Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative standard adopted and published at the date of taking bids, unless specifically stated otherwise.

The Contractor shall keep itself fully informed of, and shall observe and comply with, all laws, ordinances, and regulations which, in any manner, affect those engaged or employed on any work, or the materials and equipment used in any work or in any way affect the performance of any work, and of all orders and decrees of bodies or tribunals having jurisdiction or authority over work performed under the contract. If any

discrepancy or inconsistency should be discovered between the contract and any such law, ordinance, regulation, order or decree, the Contractor shall immediately report the same in writing to the Owner. The Contractor shall be responsible for the compliance with the above provisions by subcontractors of all tiers.

Except as otherwise specified, the Contractor shall procure any pay for all permits and inspections and shall furnish any bonds, security or deposits required to permit performance of its work hereunder.

- (a) OSHA: all work and job site conditions shall, at all times, adhere to the requirements of the latest provisions of the Occupational Safety and Health Act.
- (b) REQUIREMENTS AND CODES: Wherever references are made in the contract to requirements or codes in accordance with which work is to be performed or tested, the addition or revision of the requirements or codes current on the date of this contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such requirements or codes is solely for technical information.

This contract shall be governed by the laws of the State of Texas and by such federal laws as may be applicable.

The parties agree that all claims, disputes, and other matters in question between the Contractor and the Owner arising out of or pertaining to the contract documents or the breach thereof, shall, except as otherwise expressly provided, be decided solely in the Courts of the State of Texas, in the County of Dallas.

Interest, if any, allowable on the claims of either party shall be at the current rate for judgments in the Courts of the State of Texas.

10. CONTRACTOR TO CHECK DRAWINGS AND SCHEDULES

The Contractor shall check all dimensions, elevations, and quantities indicated on the drawings and schedules furnished to him by the Owner. The Contractor shall notify the Owner of any discrepancy between the drawings and the conditions at the site, or any error or omission in drawings, or in the layout as given by stakes points, or instructions, which he may discover in the course of work. The Contractor will not be allowed to take advantage of any error or omission in the drawings or contract documents. Full instructions will be furnished by the Owner should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

11. FIGURED DIMENSIONS TO GOVERN

Dimensions and elevations indicated on the drawings shall be accurately followed even though different from scaled measurements. No work indicated on the drawings, the dimensions of which are not indicated, shall be executed until necessary dimensions have been obtained from the Owner.

12. NO WAIVER OF RIGHTS

Neither the inspection by the Owner or any of their officials, employees, or agents, nor any order by the Owner for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the Owner, nor any extension of time, nor any possession taken by the Owner or its employees, nor any action of the Owner shall operate as a waiver of any provision of this contract, or of any power herein reserved to the Owner, or of any right to damages herein, provided nor shall any waiver of any breach in this contract be held to be a waiver of any other or subsequent breach.

13. CONTRACTOR'S SUPERINTENDENT AND EMPLOYEES

The Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized, and financed to perform such work.

The Contractor shall act as an independent contractor maintaining complete control over its employees and all of its subcontractors. The Contractor shall perform all work in an orderly and workmanlike manner, enforce strict discipline and order among its employees and assure strict discipline and order by its subcontractors.

Before starting work, the Contractor shall designate a competent, authorized representative to represent and act with full authority for the contract and shall inform the Owner in writing of the name, address, telephone number (day and night) of such representative, and of any change in such designation. This representative shall have authority to make binding and enforceable decisions in the name of the Contractor and to accept service of all notices which the Owner desires to serve or which are required by this contract to be served on the Contractor. As an alternate, such written notices may be mailed directly to the address of that party shown on the face of the Contract Agreement form. Such representative shall be present or be duly represented at the site of work at all times when work is actually in progress and, during period when work is suspended, arrangements acceptable to the Owner shall be made for any emergency work which may be required. The Contractor's authorized representative shall be supported by competent assistants, as necessary, and the authorized representative and its assistants shall be satisfactory to the Owner. All requirements, instructions, and other communications given to the Contractor's authorized representative by the Owner shall be as binding as if given to the Contractor.

The Contractor shall employ only fully experienced and properly qualified persons to perform any work. The Contractor shall be responsible for maintaining satisfactory conduct of its employees. The Contractor's site representative shall stay on the project until final completion of the work in accordance with the contract documents.

14. ENGINEERING INSPECTION

The Owner may appoint such inspectors, as the Owner deems proper to inspect the materials furnished and the work performed for compliance with the drawings and specifications. The Contractor shall furnish all reasonable assistance required by the

Owner, or inspectors, for the proper inspection of the work. Should the Contractor object to any interpretation of the contract by any inspector, the Contractor may make written appeal to the Owner for a decision, but the Owner's decision shall be final.

Inspectors shall have the authority to reject work, which is unsatisfactory, faulty, or defective or does not conform to the requirements of the drawings and specifications. Inspection shall not relieve the Contractor from any obligation to construct the work strictly in accordance with the drawings and specifications. Work not so constructed shall be removed and replaced by the Contractor at his own expense.

15. RIGHT OF OWNER TO TERMINATE CONTRACT

If the work to be done under this contract is abandoned by the Contractor; or if this contract is assigned by him without the written consent of the Owner; or if the Contractor is adjudged bankrupt, or files for voluntary bankruptcy; or if a general assignment of his assets is made for the benefit of his creditors; or if a receiver is appointed for the Contractor of any of his property or if at any time in writing to the Owner determines that the performance of the work under this contract is being unnecessarily delayed, that the Contractor is violating any of the conditions of this contract, or that he is executing the same in bad faith or otherwise not in accordance with the terms of said contract; or if the work is not substantially completed within the time named for its completion or within the time to which such completion date may be extended; then the Owner may serve written notice upon the Contractor and his surety of the Owner's intention to terminate this contract. Unless within five (5) days after the serving of such notice, a satisfactory arrangement is made for continuance, this contract shall terminate. In the event of such termination, the surety shall have the right to take over and complete the work, provided that if the surety does not commence performance within 30 days, the Owner may take over and prosecute the work to completion, by contract or otherwise. The Contractor and his surety shall be liable to the Owner for all excess cost sustained by the Owner by reason of such prosecution and completion. The Owner may take possession of, and utilize in completing the work, all materials, equipment, tools, and plant on the site of the work, including such materials, etc., as may have been placed on the site by or at the direction of the Contractor.

The Owner may, at its option, terminate the performance of the work in accordance with this section, in whole, or from time to time in part, at any time by written notice thereof the Contractor, whether or not the Contractor is in default. Upon any such termination, Contractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of the Contractor, the Owner shall pay Contractor in accordance with subparagraph (b) below, provided, however, that those provisions of the contract documents which by their very nature survive final acceptance under the contract documents shall remain in full force and effect after such termination.

- (a) Upon receipt of any such notice, the Contractor shall, unless the notice requires otherwise:

- (1) Immediately discontinue work on the date and to the extent specified in the notice;
 - (2) Place no further order or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of work under the contract that is not terminated;
 - (3) Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the Owner of all order and subcontracts to the extent they relate to the performance of work terminated, or assign to the Owner those orders and subcontracts, and revoke agreements specified in such notice; and
 - (4) Assist the Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by the Owner under the contract.
- (b) Upon any such termination, the Owner will pay the Contractor an amount determined in accordance with the following (without duplication of any item):
- (1) All amounts due and not previously paid to the Contractor for work completed in accordance with the contract prior to such notice, and for work thereafter completed as specified in such notice;
 - (2) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in subparagraph (a) (3) above;
 - (3) The reasonable cost incurred pursuant to subparagraph (a) (4) above;
 - (4) Any other reasonable costs incidental to such termination of work.

The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all work satisfactorily performed by the Contractor.

15.1 TERMINATION FOR CONVENIENCE

Owner hereby reserves the right to terminate this Agreement without regard to fault or breach upon written notice to Contractor, effective immediately unless otherwise provided in said notice to Contractor, effective immediately unless otherwise provided in said notice. In the event of such termination, Owner shall pay as the sole amount due to Contractor in connection with the work (i) all sums due for Work performed to date including allowing profit and overhead (except retainage sums shall not be paid prior to thirty (30) days following the date of termination); and (ii) reasonable cost of termination. Such sums will be due and payable on the same conditions as set forth in this Agreement for final payment to the extent applicable. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except for Contractor's obligations to perform corrective and/or warranty work and to indemnify Owner as provided for in this Agreement. It is understood

and agreed that no profit, fee or other compensation shall be due or payable for unperformed work. Contractor agrees that each subcontract and purchase order issued by it will reserve for Contractor the same right of termination provided by this Section 15.1 and Contractor further agrees to require that comparable provisions be included in all lower tier subcontracts and purchase orders.

Upon a determination by any court or body that termination of Contractor, or its successor in interest, was wrongful, such termination will be deemed converted to a termination for convenience and Contractor's remedy for wrongful termination is limited to the recovery of the payments permitted for termination for convenience as set forth above.

The rights and remedies of Owner and Contractor under this Agreement shall be non-exclusive, and shall be in addition to all the other remedies available to such parties at law or in equity, subject, however, in the case of Contractor, to the limitation contained above and other pertinent provisions of this Agreement.

16. EQUAL OPPORTUNITY

The Contractor is aware of, and is fully informed of, the Contractor's obligations under Executive Order 11246, and, where applicable, shall comply with the requirements of such order and all orders, rules and regulations promulgated thereunder unless exempted therefrom.

Without limitation of the foregoing, the Contractor's attention is directed to 41 CFR Section 60-1.4, and the clause therein entitled "Equal Opportunity Clause" which, by this reference, is incorporated herein.

The Contractor is aware of, and is fully informed of, the Contractor's responsibilities under Executive Order No. 11701, "List of Job Openings for Veterans" and, where applicable, shall comply with the requirements of such order, and all orders, rules and regulations promulgated thereunder unless exempted therefrom.

Without limitation of the foregoing, the Contractor's attention is directed to 41 CFR 60-250 et seq. and the clause therein entitled "Affirmative Action Obligations of the Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era" which, by this reference is incorporated herein.

The Contractor certifies those segregated facilities, including, but not limited to, washrooms, work areas, locker rooms, are not, and will not, be maintained or provided for the Contractor's employees. Where applicable, the Contractor shall obtain similar certification from any of its subcontractors, vendors, or suppliers performing work under this contract.

The Contractor is aware of, and is fully informed of, the Contractor's responsibilities under the Rehabilitation Act of 1973, and, where applicable, shall comply with the

provisions of the Act, and the regulations promulgated thereunder unless exempted therefrom.

Without limitation of the foregoing, the Contractor's attention is directed to 41 CFR Section 60-741 and the clause entitled "Affirmative Action Obligations of the Contractors and Subcontractors for Handicapped Workers" which, by this reference, is incorporated herein. Contractor must also comply with the rules and regulations as established by the Americans with Disabilities Act of 1990.

**17. BEGINNING, PROGRESS, AND COMPLETION OF THE WORK;
LIQUIDATED DAMAGES**

The time of completion is of the essence of this contract. Unless otherwise specified in these contract documents or advised by written order of the Owner, the Contractor shall begin work within 10 days after the date of contract. The work shall be prosecuted to completion in accordance with the schedule provided for below and shall be 100% completed within time period stated in the Proposal.

The Owner and Contractor, recognizing that calculation of damages caused by Contractor's failure to complete within the contract time are difficult to assess, hereby agree that liquidated damages shall be assessed Contractor at the rate of \$500.00 per calendar day for each day Contractor is late in completing.

It is understood that the foregoing constitutes an agreement as to minimum amount of damages only for failure to complete the work within the specified time. Should the Owner suffer damages over and above the amount specified above for any failure or negligence on the Contractor's part, other than failure to complete the work within the specified time, the Owner may recover such additional amount.

A detailed construction schedule and monthly payment schedule shall be prepared by the Contractor and submitted to the Owner for review within ten (10) days of the effective beginning date of the Contract, or prior to the commencement of construction, whichever occurs first. The schedule shall contain the various activities required to perform the work and the dates the activities will be started and completed in order to complete the work in accordance with the specified schedule requirements. The Contractor is responsible for determining the sequence and time estimates of the detailed construction activities. However, the Owner reserves the right to require the Contractor to modify any portion of the schedule the Owner determines to be impractical or unreasonable; as required to coordinate the Contractor's activities with those of other Contractors, if any, engaged in work for the Owner on the site; to avoid undue interference with the Owner's operations; and to assure completion of the work by the date or dates stipulated. Upon acceptance by the Owner of the Contractor's detailed construction schedule, the Contractor will be responsible for maintaining such schedule.

If at any time the Contractor's work is behind schedule, he shall immediately put into effect definite procedures for getting the work back on schedule. The procedures shall be subject to review and modification by the Owner. The Contractor will not be allowed

extra compensation for costs (whether for costs for materials used and/or labor to be paid) incurred by him because of Contractor's accelerated operations required to maintain the schedule.

17.1 EXTENSION OF TIME FOR DELAY

In the event the progress of the work is delayed or interrupted by occurrences or events which entitle Contractor to an extension of time pursuant to the terms of this Agreement, then the work completion date shall be extended for a period equal to the length of such delay if within seven (7) days after the commencement of any such delay, contractor delivers to Owner a written notice of such delay stating the nature thereof and within seven (7) days following the expiration of any such delay provides a written request for extension of the work completion date by reason of such delay and such request is approved by Owner, which approval shall not be unreasonably withheld. Failure to deliver any such notice or request within the required period shall constitute an irrevocable waiver of any extension of the previously scheduled work completion date by reason of the cause in respect of which such notice and request were required to make only one such request with respect thereto. No extension of the previously scheduled work completion date (or right on the part of Contractor to secure any such extension) pursuant to this Section shall prejudice any right Owner may have under this Agreement, or otherwise, to terminate this Agreement.

Extension of time shall be Contractor's sole remedy for any such delay (except for Contractor's right to terminate this Agreement pursuant to the terms and provisions hereinafter set forth), unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the work and where to the extent that such acts continue after Contractor's notice to Owner of such interference. Owner's exercise of any of its rights to order changes in the work pursuant to this contract, regardless of the extent of number of such changes, or Owner's exercise of any of its remedies of suspension of the work, or requirement or correction or re-execution of any defective work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the work.

18. HINDRANCES AND DELAYS

The Contractor expressly agrees that the period of time named in the Proposal to complete all work includes allowance for all hindrances and delays incident to the work. The Contractor further agrees that no claims shall be made for hindrances and delays from any cause during the performance of the work, except as specifically provided for in the articles SUSPENSION OF WORK and EXTENSIONS OF TIME in these General Conditions.

18.1 RESEQUENCING OR ACCELERATION

In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the work to bring the work back on schedule. In the event Contractor determines that the previously scheduled work completion date cannot be met by resequencing the work, then Contractor shall immediately provide to Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the work submitted by Contractor pursuant to this

paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the declared new scheduled completion date.

Owner shall additionally be entitled to direct the acceleration or resequencing of the work in order to achieve completion prior to the declared new scheduled completion date and Contractor shall be reimbursed by Owner for the amount of labor overtime actually incurred in respect thereto and shall be entitled to an increase adjustment the contract price to the extent of the labor portion of overtime so incurred.

19. SUSPENSION OF WORK

The Owner reserves the right to suspend and reinstate execution of the whole or any part of the work without invalidating the provisions of the contract. Orders for suspension or reinstatement of work will be issued by the Owner to the Contractor in writing. The time for completion of the work will be extended for a period equal to the time lost by reason of the suspension.

The Owner will pay extra costs and expenses, which are caused by work suspensions ordered by the Owner, to the Contractor.

20. EXTENSIONS OF TIME

Should the Contractor be delayed in the final completion of the work by any act or neglect of the Owner, or of any employee of either, or by any other Contractor employed by the Owner, or by strike, fire, regulatory agencies or other cause outside of the control of the Contractor and which, in the opinion of the Owner, could have been neither anticipated nor avoided, then an extension of time sufficient to compensate for the delay, as determined by the Owner, will be granted by the Owner; provided that the Contractor gives the Owner notice in writing within 10 days of the cause of delay in each case and demonstrates that he has used all reasonable means to minimize the delay.

Extensions of time will not be granted for delays caused by unfavorable weather, unsuitable ground conditions, inadequate construction force, or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed.

Failure of Owner furnished equipment and materials to arrive as scheduled, or failure of other construction Contractors to meet their schedule, shall not be justification for an extension of time, except where such failure causes, in the opinion of the Owner, an actual delay in the Contractor's work.

21. EXTRA OR CHANGE ORDER WORK

If a modification increases the amount of the work, and the added work or any part thereof is a type and character which can properly and fairly be classified under one or more unit price items of the Proposal listed in the Scope of Work section of this contract, then the added work or part thereof shall be paid for according to the amount actually

done and at the applicable unit price. Otherwise, such work shall be paid for as hereinafter provided.

Claims for extra work will not be paid unless the work covered by such claims was authorized in writing by the Owner. The Contractor shall not have the right to prosecute or maintain an action in court to recover for extra work unless the claim is based upon a written order from the Owner. Payments for extra work will be based on agreed lump sums or on agreed unit prices as listed in the Scope of Work section of the contract whenever the Owner and the Contractor agree upon such prices before the extra work is started; otherwise, payments for extra work will be based on actual field cost plus the specified percentage allowance.

For the purpose of determining whether proposed extra work will be authorized, or for determining the payment method for extra work, the Contractor shall submit to the Owner, upon request, detailed cost estimate for proposed extra work. The Change Order Request shall indicate itemized quantities and charges for all elements of direct cost. Charges for the Contractor's subcontractor's extra profit, extra general superintendence, extra field office expense, and extra overheads shall be indicated as a percentage addition to the total estimated net cost. Unless otherwise agreed upon by the Contractor and the Owner, such percentage additions shall be 15 percent for the extra work performed by the Contractor's own forces or 20 percent for extra work performed by a subcontractor.

Further, the Change Order Request shall also include a suitable breakdown by trades and work classifications, Contractor's estimate of the changes in the cost of the work attributable to the changes set forth in such Change Order Request, a proposed adjustment to the scheduled completion date resulting from such Change Order Request, and any proposed adjustments of time and costs related to unchanged work resulting from such Change Order Request. If Owner approves in writing such estimate by Contractor, such Change Order Request and such estimate shall constitute a Change Order, and the cost of the contract price and previously scheduled work completion date shall be adjusted as set forth in such estimate. Change Orders shall not cause any modification to Contractor's fee except as specifically set forth herein, it being understood and agreed that Contractor will receive no fee based on the increased cost of the work resulting from Change Orders unless the new work requested is beyond the scope of the work, and then only to the extent thereof pursuant to the terms of this contract. Contractor shall include in each subcontract a limitation on the amount of profit and overhead, which subcontractors can include in Change Orders, which limitation will be subject to the approval of Owner. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Agreement.

When payment for extra work is based on actual field cost, the Contractor will be paid the actual field cost plus an allowance of 15 percent if the extra work is performed by the Contractor's own forces or 20 percent if the extra work is performed by a subcontractor. The allowance will be paid as full compensation for the Contractor's and subcontractors

extra profit, extra general superintendence, extra field office expense, extra overheads, and all other elements of extra cost not defined herein as actual field cost.

The actual field cost shall include only those extra costs for labor and materials expended in direct performance of the extra work. The form in which actual field cost records are kept, the construction methods, and the type and quantity of equipment used shall be acceptable to the Owner.

Construction equipment which the Contractor has on the job site and which is of a type and size suitable for use in performing the extra work shall be used. The hourly rental charges for equipment shall not exceed one-half of one percent of the latest applicable Associated Equipment Distributors published monthly rental rates and shall apply to only the actual time the equipment is used in performing the extra work.

When extra work requires the use of equipment, which the Contractor does not have on the job site, the Contractor shall obtain the occurrence of the Owner before renting or otherwise acquiring additional equipment. The rental charges for the additional equipment shall not exceed the latest applicable Associated Equipment Distributors published rental rates.

21.1 DECREASED WORK

If a modification decreases the amount of work to be done, such decrease shall not constitute the basis for a claim for damages or anticipated profits on work affected by such decrease. Where the value of omitted work is not covered by applicable unit prices, the Owner shall determine on an equitable basis the amount of (a) credit due the Owner for contract work not done as a result of an authorized change, (b) allowance to the Contractor for any actual loss incurred in connection with the purchase, delivery, and subsequent disposal of materials or equipment required for use on the work as planned and which could not be used in any part of the work as actually built, and (c) any other adjustment of the contract amount where the method to be used in making such adjustment is not clearly defined in the contract documents.

Unless otherwise agreed upon by the Owner and the Contractor, the credit due the Owner for reductions in the amount of work to be done shall be the estimated field cost of the deleted work plus an overhead allowance of:

Ten percent of the estimated field cost if the work was to have been done by the Contractor's own forces, or;

Fifteen percent of the estimated field cost if the work was to be done by a subcontractor.

Field cost referred to above shall include the category of costs listed as actual field costs, items (a) to (f) inclusive of the article entitled EXTRA WORK.

22. PROTECTION OF WORK AND PROPERTY

The Contractor shall be responsible for and shall bear any and all risk of loss of, or damage to work in progress, all materials delivered to the site, and all materials, tools, and equipment until completion and final acceptance of the work to be performed under this contract.

The Contractor shall promptly take all precautions which are necessary and adequate against any conditions created during the progress of the Contractor's activities hereunder which involve a risk of bodily harm to persons or a risk of damage to any property. Contractor shall continuously inspect all work, materials and equipment to discover and determine, and shall be solely responsible for discovery, determination and correction of any conditions which involve a risk of bodily harm to persons or damage to property.

The Contractor shall comply with all applicable safety laws, standards, codes and regulations in the jurisdiction where the work is being performed specifically but without limiting the generality of the foregoing and regardless of any exemptions provided by law, with all rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970.

The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interface with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. The Contractor will protect from damage all existing improvements, utilities, roads, and bridges at or near the site of work and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract of the failure to exercise reasonable care in the performance of the work. Under no circumstances will county or township roads and bridges be subject to greater than normal highway truck loadings.

The Contractor shall provide and maintain such temporary work as is required for the protection of the public and those employed in or about the work site, including all signs, guards, barricades, night lights and any other temporary protection as may be necessary. Contractor shall provide and maintain such temporary work as is required for protection of finished work, including building paper, boxing, planking, protective coating, and such other protection as may be deemed necessary by the Owner. All such work shall be returned to original condition by the Contractor on completion of the contract.

Whenever necessary to maintain proper temperatures for performance of work, or to protect or to close in work in place, Contractor shall provide and maintain temporary enclosures as directed by the Owner for all openings or exterior surfaces that are not enclosed with finishing materials.

The Contractor shall protect all the work including buildings, structures, equipment, excavations, trenches, etc. from water damage including damage by rainwater, ground water, backing-up of drains, downspouts of sewers and shall construct and maintain all necessary drainage and do all pumping required to protect or to perform the work.

Contractor shall provide protection to any equipment in place, as required to prevent damage by moisture. Contractor, in general, shall at all times carefully protect the work, materials, and equipment against damage from the weather, and comply with the directions of the Owner in order to avoid any adverse effect on the project from weather conditions.

The Contractor assumes all liability for its failure to comply with the provisions of this Article. The Contractor shall include this Article in its entirety in all subcontracts for any work at the project site.

Upon the failure of the Contractor or its subcontractors to comply with any of the requirements of the Article, the Owner shall have the authority to stop any operations of the Contractor or its subcontractors affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by the Contractor or its subcontractors.

23. SAFETY

The Contractor shall at all times conduct all operations under the Contractor in a manner to avoid the risk of bodily harm to persons or risk of damage to any property. The Contractor shall promptly take all precautions, which are necessary and adequate against any conditions, which involve a risk of bodily harm to persons or a risk of damage to any property. The Contractor shall continuously inspect all work, materials and equipment to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such conditions. The Contractor shall designate an employee as safety supervisor who is acceptable to the Owner.

The Contractor shall comply with all applicable laws, regulations and standards. The Contractor shall coordinate with other Contractors and subcontractors on safety matters and shall promptly comply with any specific safety directions given to the Contractor by the Owner.

The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazard, promulgating safety regulations and notifying the Owner and users of adjacent properties and utilities.

The Contractor shall maintain a Safety Program with detail commensurate with the work to be performed. Such review shall not relieve the Contractor of its responsibility for safety, nor shall it be construed as limiting in any manner the Contractor's obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions at the site.

The Contractor shall maintain accurate accident and injury reports.

The Contractor shall hold regular scheduled meetings to instruct its personnel on safety practices. The Contractor shall furnish safety equipment and enforce the use of such equipment by its employees.

All equipment furnished and installed on this project shall be manufactured and installed in accordance with the applicable parts of the Williams-Steiger Occupational Safety and Health Act of 1970, and its subsequent amendments and revisions. All work shall be performed in accordance with the regulations and requirements of the above noted Act, revisions and amendments.

EXCAVATION SAFETY PROCEDURE

In a municipality or in the extraterritorial jurisdiction of a municipality as provided by the Municipal Annexation (Chapter 43) Texas Local Government Code, on construction projects in which excavation will exceed a depth of five feet, the bid document and the contract must include detailed plans and specifications for excavation safety systems.

Prior to execution of a contract the Contractor will be required to submit an excavation safety plan for the project. This excavation safety plan must be designed and sealed by a professional engineer registered in the State of Texas with professional experience in soil mechanics. The Contractor is responsible for obtaining borings and soil analysis as required for plan design. The excavation safety plan shall be designed in conformance with Occupational Safety and Health Administration (OSHA) Standards and Regulations.

After review of the excavation safety plan, the City Engineer will forward the reviewed plan to the appropriate city construction division for use in inspection. Plans for construction will not be released by the City Engineer until this plan is reviewed. Changes in the excavation safety plan after initiation of construction may not be cause for extension of time or change order, and will require the same review process. Contractor accepts sole responsibility for compliance with all applicable safety requirements. The review is only for general conformance with OSHA Safety Standards. Release of the excavation safety plan by the City Engineer does not relieve Contractor from any property damage or bodily injury (including death) that arises from use of the excavation safety plan, from Contractor's negligence in performance of contract work, or from city's failure to note exceptions to the excavation plan. The safety plan shall remain the sole responsibility and liability of the Contractor. A separate pay item for an excavation and support system shall be included in the bid documents.

Contractors have three ways to meet OSHA standards for excavation safety. They are as follows:

1. Minimum angle of repose for sloping of the sides of excavations.
2. Utilization of trench box.
3. Shoring, sheeting and bracing methods.

Contractors electing to utilize the minimum angle of repose must submit:

1. Soil classification according to the unified soil classification system including water content and plasticity indexes, and a minimum angle of slope excavation.
2. A detailed plan of the excavation area and the impact on existing right-of-way and infrastructure.
3. Waiver of claim for delay of cost.

Contractors electing to utilize a trench box must submit:

1. Physical dimensions, materials, position in the trench, expected loads, and the strength of the box.
2. Waiver of claim for delay cost.

Contractors electing to utilize shoring, sheeting and bracing must submit:

1. Dimensions and materials of all uprights, stringers, crossbracing and spacing required to meet OSHA requirements.
2. Waiver of claim for delay cost.

24. TAXES, PERMITS AND LICENSES

The Contractor shall obtain and pay for all licenses, permits, and inspections required for the work.

The Contractor shall pay all appropriate sales taxes, excluding materials permanently retained by the City of Carrollton franchise taxes, income taxes, gross receipts taxes, and other business or occupation taxes imposed upon the Contractor.

25. PATENTS

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment, or processes used in the work, shall be included in the contract amount. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he shall be liable for any damages or claims for patent infringements. The Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the Owner for alleged infringement of any patents involved in the work and, in case of an award of damages, the Contractor shall pay such award. Final payment to the Contractor by the Owner will not be made while any such suit or claim remains unsettled.

In the event the Contractor is found to have infringed a patent, the Contractor shall either replace the part or process with a noninfringing part or process approved by the Owner, or secure the right to use the infringing part or process. Either choice shall be at the Contractor's expense.

26. MATERIALS AND EQUIPMENT

Unless specifically provided otherwise in each case, all materials and equipment furnished for permanent installation in the work shall conform to applicable standard specifications and shall be new, unused, and undamaged when installed or otherwise incorporated in the work. No such material or equipment shall be used by the Contractor

for any purpose other than that intended or specified, unless such use is specifically authorized by the Owner in each case.

All required tests in connection with acceptance of source of materials shall be made at the Contractor's expense by a properly equipped laboratory of established reputation whose work and testing facilities are acceptable to the Owner. Any change in origin or method of reparation or manufacture of a material be routinely tested will require new tests. Reports of all tests shall be furnished to the Owner in as many copies as required.

27. GUARANTEE

Contractor shall guarantee that all products are in accordance with the manufacturer's guarantees, warranties, or Policies. Any replacement of defective material or materials will be made in accordance with such guarantee or warranty policies but, in any case, responsibility ends with the replacement of the defective part or parts, and no responsibility will be assumed for unauthorized repair or replacement of said equipment. Nor any expense will be incurred due to failure of said equipment excepting replacement of its defective part or parts by the manufacturer and in accordance with said manufacturer's policies.

Contractor's warranty against defects in material and workmanship shall extend two years from the date of final payment.

28. INSURANCE

The Contractor shall secure and maintain throughout the duration of this contract insurance of such types and in such amount as may be necessary to protect himself and the interest of the Owner against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the Owner but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the Owner prior to starting any construction work on this contract. The certificates shall state that 30 days advance written notice will be given to the Owner before any policy covered thereby is changed or canceled. No deductibles shall be shown on the certificate.

The Contractor shall comply with all Federal, State and local laws and ordinances relating to Social Security, Unemployment Insurance, Pensions, etc.

28.1 WORKERS COMPENSATION INSURANCE COVERAGE

(A) Definitions:

Certificate of coverage ("certificate") - copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. **Persons providing services on the project ("subcontractor" in §406.096)** - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- (C) **The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.**
- (D) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- (E) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (F) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (G) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- (H) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (I) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division

of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- (K) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

28.2 COMPREHENSIVE AUTOMOBILE LIABILITY

This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall not be less than:

Bodily injury \$250,000/person
 \$500,000/occurrence

Property Damage \$100,000/occurrence

The insurance shall be of the occurrence type and name the Owner as additional insured.

28.3 COMPREHENSIVE GENERAL LIABILITY

This insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act of omission of the Contractor or his agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under the article entitled DEFENSE OF SUITS.

To the extent that the Contractor's work, or work under his direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property. The liability limits shall not be less than:

Bodily Injury \$250,000/person
 \$500,000/occurrence

Property Damage ...\$500,000/occurrence
 ...\$500,000/aggregate

The insurance shall be of the occurrence type and name the Owner as additional insured.

28.4 BUILDER 'S RISK

This insurance shall be written in completed value form and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment no otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not

be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

28.5 INSTALLATION FLOATER

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverages designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

29. DEFENSE OF SUITS

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, materialmen, or suppliers the Contractor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgements, or decrees arising out of such action.

30. PATENT INDEMNITY

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process, or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner.

31. INDEMNITY AND RELEASE

The Contractor is solely responsible for and shall defend, indemnify, and hold Owner (or any of Owner's representatives or employees), free and harmless from and against any and all claims, liabilities, demands, losses, damages, costs or expense to all persons (including but not limited to reasonable attorneys' fees) arising out of resulting from or occurring in connection with the performance of the work that is (i) attributable to any bodily or personal injury, sickness, diseases or death of any person or any damage or injury to or destruction of real or personal property (other than the work itself) including the loss of use thereof, and (ii) caused in whole or in part by any negligent, strict liability or other act or omission of contractor, any subcontractor or supplier, their respective agents or employees or any other party for whom any of them may be liable regardless of whether such is caused in part by the negligent, strict liability or other act or omission of a party or parties indemnified hereunder.

Said indemnity and hold harmless agreement shall also apply to claims arising from accidents to contractor, its agents or employees, whether occasioned by contractor or its employees, the owner or his employees, or by any other person or persons.

The foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

32. FINAL PAYMENT AND RELEASE

Acceptance by the Contractor of last payment shall be a release to the Owner and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

33. INSPECTION

The Owner shall have the right, without extra charge therefore; to inspect all materials and equipment supplied under this contract at any time, including the place of manufacture, either during performance of the work, on final inspection, or during any applicable warranty period. The Owner or its designated representative shall have the right to reject equipment, materials and work not complying with the requirements of this contract. The Owner shall notify the Contractor in writing that such equipment, material or work is rejected. Thereupon, rejected work shall be satisfactorily corrected, rejected equipment shall be satisfactorily repaired or replaced with satisfactory equipment, and rejected material shall be satisfactorily replaced with satisfactory material, all in accordance with the contract, and the Contractor shall promptly segregate and remove rejected materials and equipment from the premises. All such correcting, repairing, replacing, and removing shall be by and at the expense of the Contractor.

The Owner will perform inspections in such a manner so as not to delay the work unreasonably, and the Contractor shall perform its work in such a manner as not to delay inspection unreasonably.

34. FINAL INSPECTION

When the work has been completed and at a time mutually agreeable to the Owner and Contractor, the Owner will make a final inspection of the work as to the acceptability and completeness of the work.

35. CLAIMS FOR LABOR AND MATERIALS

The Contractor shall pay all subcontractors and other persons furnishing labor or materials for the work from the contract amount. The Contractor is aware of, and is fully informed of the Contractor's responsibility under article 601f V.T.C.S. pertaining to payments for goods and services contracted for by State agencies or political subdivisions, applies to construction contracts. The Contractor shall be responsible for payment to vendors and subcontractors in accordance with Chapter 2251, Texas Government Code. No third party shall have any contractual privity with the Owner. The Contractor shall indemnify and save harmless the Owner from all claims for labor and materials furnished under this contract. When requested by the Owner, the Contractor shall submit satisfactory evidence that all persons, firms, or corporations who have done work or furnished materials under this contract, for which the Owner may become legally liable, have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, an amount will be retained money due the Contractor which in addition to any other sums that may be retained will be sufficient, in the opinion of the Owner, to liquidate all such claims. Such sum will be retained until the claims as aforesaid are fully settled or satisfactorily secured.

Before final acceptance of the work by the Owner, the Contractor shall submit to the Owner in duplicate a notarized affidavit stating that all subcontractors, vendors, persons, or firms who have furnished labor or materials for the work have been fully paid and that all taxes have been paid. A statement from the surety shall also be submitted consenting to the making of the final payment.

36. ESTIMATES AND PAYMENTS

On or about the first day of each month the Contractor shall make an estimate of the value of the work completed. The Contractor and the Owner shall review the estimate prior to submitting the formal invoice to the Owner. The estimated cost of repairing, replacing, or rebuilding any part of the work or replacing materials which do not conform to the drawings and specifications will be deducted from the estimated value by the Owner.

The Contractor shall furnish to the Owner such detailed information as he may request to aid in the preparation of monthly estimates. After each estimate has been found acceptable, the Owner will pay to the Contractor on or about the 25th day of the month 90% of the estimated value less any previous payments. The Contractor shall be responsible for payment to vendors and subcontractors in accordance with article Chapter 2251, Texas Government Code.

There will be no payments for materials stored on the site.

After official acceptance of the work, the Owner will prepare a final estimate of the work done under this contract. Preparation of the final estimate will not be made until the affidavit and statement required in the article entitled CLAIMS FOR LABOR AND MATERIALS have been received. The Owner will, within 30 days thereafter, pay the entire balance due after deducting all amounts to be retained under any provision of this contract.

36.1 PAYMENTS

Payments may be withheld by Owner for (1) defective work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) reasonable evidence that the work cannot be completed for the unpaid balance of the contract price, (5) damage to the Owner or another contractor, (6) reasonable evidence that the work will not be completed by the scheduled work completion date and that the unpaid balance of the contract price would not be adequate to cover actual or liquidated damages for the anticipated delay, (7) persistent failure to carry out the work in accordance with the Contract Documents or (8) statutory retainage as described in Chapter 53 of the Texas Property Code.

37. LIENS

Neither the Contractor, nor any of his subcontractors, workers or suppliers shall have the right of lien against the work performed under this contract, or any property of the Owner to secure payment for labor and materials.

38. STATE LAW

This contract is performable in the State of Texas and shall be governed by the laws of the State of Texas. Venue on any suit hereunder shall be in Dallas County, Texas.

**CITY OF CARROLLTON, TX
JIMMY PORTER PARK PAVILION**

SPECIAL CONDITIONS

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SC.1. OWNER'S REPRESENTATIVE

For the purposes of this contract, the Owner's Representative is:

Mr. Bobby Brady
Parks Manager
Parks and Recreation Department
City of Carrollton, Texas
2155 Sandy Lake Rd.
Carrollton, Texas 75006
972-466-9818 (o)
Bobby.brady@cityofcarrollton.com

All questions, correspondence, change order requests and other communication related to the project shall be directed to and by the Owner's Representative. This includes all approvals, acceptances and field directives regardless of statements in any other section of the construction documents unless authorized otherwise in writing by the Owner's Representative.

SC.2. PROPOSAL

For the purpose of this proposal and contract, the term "bidder" shall be synonymous with "Proposer".

Bidders shall fill out the proposal completely, stating all prices in both script and figures.

The prices bid in the proposal shall be full compensation for all material, labor, equipment, and incidental items required to complete the project ready for use. The cost of all material, labor, equipment, and incidental work required to complete the project ready for use must be included in the unit or lump sum prices for the bid items provided in the proposal, and no direct compensation will be made for any other work. In case of error, ambiguity, or lack of clearness the Owner reserves the right to consider the bid in the manner that is most advantageous to the Owner.

A computer-generated spreadsheet may be submitted in lieu of the Proposal and Bid Schedule. A computer-generated spreadsheet will be submitted and accepted under the following conditions:

NOTE: A COMPUTER GENERATED PROPOSAL FORM MAY BE USED IN LIEU OF THE ENCLOSED FORMS. THE FORM SHALL BE 8½" x 11" IN SIZE, AND WILL BE ATTACHED TO THE PROPOSAL IN THE PROPER SECTION, AND WILL BE MADE PART OF THE PROPOSAL AND CONTRACT DOCUMENTS.

NOTE: SPREADSHEET OPTION IS FOR THE CONVENIENCE OF THE BIDDER, NO WORDING IN THE SPREADSHEET SHALL MODIFY OR AMEND THE WORDING IN THE BID PROPOSAL OR PLANS.

The unit price on the form shall be the price of the item, and any errors that may be present in the printout will not be recognized as an opportunity to revise the proposal. The summary sheet included in this bid document shall be utilized for summarizing the bid.

The spreadsheet shall present each item in the order and number as shown in the City's Proposal and Bid Schedule for this project. The spreadsheet shall be in a column format with the following columns:

- Item Number
- Quantity
- Unit of Measure
- Description
- Unit Price
- Extended Amount

SC.3. CONSTRUCTION OBSERVATION BY CONSULTANTS

The City will observe the construction and reserves the right to assign an independent consultant(s) to observe all or portions of the construction on the City's behalf, generally in accordance with industry standards. Should the City exercise such right, the consultant will observe the construction periodically, within the obligations for site visits in their agreement with the City, in an effort to determine that the work is proceeding in general accordance with the contract documents, but will not be a guarantor of the Contractor's performance.

No independent consultant assigned by the City shall be considered as the Owner's Representative nor have the authority to direct work.

SC.4. SPECIFICATIONS

All construction must conform to the technical specifications contained in this document, the current edition of the North Central Texas Council of Government (NCTCOG) Standard Specifications for Public Works Construction and the City of Carrollton General Design Standards.

CONTRACTOR MUST OBTAIN COPIES OF THE LATEST CITY OF CARROLLTON GENERAL DESIGN STANDARDS, CARROLLTON FACILITY SERVICES GENERAL BUILDING STANDARDS, AND THE NCTCOG SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION. CONTRACTOR SHALL HAVE ONE COPY OF EACH AT THE PROJECT AT ALL TIMES.

Titles to divisions and paragraphs in these Contract Documents are introduced merely for convenience and are not to be taken as part of the Specifications and are, furthermore, not to be taken as a correct and complete segregation of the several units of material and labor. No responsibility, either direct or implied, is assumed by the Engineer/Owner for omissions or duplications by the Contractor or his Sub-Contractor, due to real or alleged error in arrangement of matter in these Contract Documents.

In the event of conflicts between methods of measurement and payments for the various items of work between the Proposal and the Specifications, the Proposal shall prevail.

SC.5. COORDINATION OF SPECIFICATIONS, PROPOSAL AND SPECIAL PROVISIONS

The Contractor shall not take advantage of any apparent error or omission and the Owner shall be permitted to make such corrections or interpretations as may be deemed necessary for the fulfillment of the intent of the contract documents without additional cost. In the event the Contractor discovers an apparent error or discrepancy, he shall immediately call this to the attention of the Owner. Notification should be in writing and should take place before any material is ordered or any portion of the item in question is constructed. Full instructions will be furnished by the Owner should an error or omission be discovered and the Contractor shall carry out such instructions as if originally specified.

SC.6. CONFLICTS BETWEEN SPECIFICATIONS AND PLANS

In the event of conflicts, ambiguity or lack of clearness between the Specifications and Plans, the most stringent or advantageous condition to the City shall prevail.

SC.7. ADDENDA

Bidders desiring further information, or interpretation of the specifications, must make request for such information in writing to the Owner Representative, no less than 48 hours before the bid opening. Answers to all such Addenda will be bound with and made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in or omissions from the plans, specifications, or other contract documents, or should he be in doubt as to their meaning, he should at once notify the Owner Representative in order that a Written Addendum may be sent to all bidders. Any Addenda issued prior to 24 hours of the opening of bids will be mailed or delivered to each Contractor contemplating the submission of a proposal on this work. The proposal as submitted by the Contractor is to include any Addenda if such are issued by the Engineer prior to 24 hours of the opening of bids. Verbal changes in the work, made prior to submission of bids will not be binding.

SC.8. SITE INVESTIGATION & EXISTING UTILITIES

The information contained on the drawings in regard to the location of underground utilities is furnished solely for the convenience of the CONTRACTOR as the best information available at this time. The accuracy of this information is not guaranteed and its use in no way relieves the CONTRACTOR of any responsibility for any losses due to inaccuracies or deviations therefrom, which may be encountered. **CONTRACTOR MUST VIDEO THE PROJECT AREA AND VERIFY THE SIZE AND LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.** A copy of the video shall be submitted to the Owner.

The Contractor shall be responsible for the protection of all existing utilities or service lines crossed or exposed by his construction operations. Where existing utilities or service lines are cut, broken, or damaged, the Contractor shall replace the utilities or service lines with the same type of original construction, or better, at his own cost and expense. Existing landscaping and irrigation shall be protected at all times.

The CONTRACTOR shall carefully examine the site and satisfy himself about all conditions, which can in any way affect the work or the cost thereof.

SC.9. PAYMENT FOR OVERTIME CHARGES

The Contractor will be responsible for payment of overtime charges for the Construction Inspector before 7:30 a.m. and after 4:30 p.m. (Monday through Friday) and on Saturdays. The charges will be at a rate of \$50.00 per hour (minimum two (2) hours). This will be paid in full before final acceptance of the project.

The Contractor will also be responsible for payment of overtime charges for Public Works staff for water or sanitary sewer services (valve shut downs, emergency repairs, etc.) before 7:30 a.m. and after 4:30 p.m. (Monday through Friday) and on Saturdays. The charges will be at a rate of \$50.00 per hour (minimum two (2) hours) plus equipment with a \$25.00 administrative fee. This will be paid in full before final acceptance of the project.

SC.10. SUPERINTENDENT AND EMPLOYEES

In addition to provisions of the General Conditions entitled "Contractor's Superintendent and Employees, it is a requirement that the OWNER be notified in writing any time that the authorized superintendent will not be on site while work is in progress, and provide all contact information of the duly appointed representative serving as a temporary superintendent. The temporary superintendent shall assume the role as such, and be in full charge and observation of all work without other distractions or tasks. A temporary superintendent may not be used for more than eight working hours without the written approval of the OWNER. In the event that a temporary superintendent is not available, all work shall be halted until the authorized superintendent returns.

The superintendent and staff shall be satisfactory to the OWNER. The superintendent shall not be changed during this Contract except with the written consent of the OWNER, which will not be reasonably withheld, or unless the superintendent proves unsatisfactory to the CONTRACTOR and ceases to be in its employ. In the event that the authorized superintendent leaves the CONTRACTOR's employment, such authorized superintendent shall be subject to the Owner's reasonable approval.

If the superintendent or any staff should be or become unsatisfactory to the OWNER, he/she shall be removed by the CONTRACTOR upon written direction of the OWNER, and in such event, the CONTRACTOR shall not be entitled to file a claim for any additional working time or money from the OWNER.

Whenever the OWNER shall inform the CONTRACTOR in writing that, in its opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it. Under urgent circumstances, the OWNER may orally require immediate removal of an employee for cause, to be followed by written confirmation.

SC.11. LABOR CLASSIFICATION AND MINIMUM WAGE SCALE

The Contractor may bring his superintendent, foreman, sub-foreman, machine operators and sufficient key men to round his organization. All other skilled and unskilled labor used on

the work, when qualified, fit and available, shall be obtained from residents within the City of Carrollton, Texas.

Attention is called to the fact that the inclusion of minimum scale of wages to be paid to employees engaged in the work under this contract does not release the Contractor from compliance with the State Wage and Hour laws of the State and must not pay less than the rates legally prescribed as set forth herein.

SC.12. PROJECT COMPLETION VS SUBSTANTIAL COMPLETION

The City of Carrollton does not recognize substantial completion. Any reference to "Substantial Completion" throughout the construction documents should be interpreted as "Full Project Completion".

SC.13. CONSTRUCTION FIELD OFFICES

Construction field office as described in 015000.1.13 is not required for the Hebron & Josey Library Remodel project as long as Contractor can comply with other provisions of the Contract Document, and demonstrate the ability adequately manage the project without impacting or using other library facilities. This exclusion does NOT apply to any other subsection or provision, especially Temporary Sanitary Facilities (015000.1.04)

**PREVAILING WAGE RATES FOR BUILDING CONSTRUCTION
CITY OF CARROLLTON**

If this construction project involves the expenditure of federal funds in excess of \$2,000.00, and requires that the minimum wages to be paid various classes of laborers and mechanics be based upon the wages that are determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on a project of a character similar to the contract work in the City of Carrollton.

Prevailing wage rates are determined by Davis-Bacon and other related Acts and may be found in the Code of Federal Regulations 29 CFR 1.5 and are published in the Federal Register. It is the responsibility of the contractor to ensure items bid (wages) in this contract are current to the published rates.

Except for work on legal holidays, the "general prevailing rate of per diem wage" for the various crafts of type of workers of mechanics is the product of (a) the number of hours worked per day, except for overtime hours, times (b) the above respective Rate Per Hour.

For legal holidays, the "general prevailing rate of per diem wage" for the various crafts or type of mechanics is the product of (a) one and one-half time the above respective Rate Per Hour times (b) the number of hours worked on the legal holiday.

The "general prevailing rate for overtime work" for the crafts or type of workers or mechanics is one and one-half times the above the respective Rate Per Hour.

Under the provisions of Chapter 2258 Texas Government Code, the Contractor shall forfeit as a penalty to the entity on whose behalf the contract is made or awarded. Ten Dollars (\$10.00) for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such laborer, worker or mechanic is paid less than the said stipulated rates for any work under the contract, by him, or by any subcontractor under him.

Under the provisions of Chapter 61 (Payment of Wages) Texas Labor Code, the Contractor shall forfeit as a penalty to the entity on whose behalf the contract is made or awarded, Ten Dollars (\$10.00) for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such laborer, worker or mechanic is paid less than the said stipulated rates for any work under the contract, by him, or by any subcontractor under him.

The contractor shall be required to provide necessary documentation ensuring compliance with these regulations as part of this contract.

DETAILS OF THE BACON DAVIS REQUIREMENTS ARE IN A SEPARATE DOCUMENT LOADED WITH THIS BID ON THE CITY'S WEBSITE AT WWW.CITYOFCARROLLTON.COM/PURCHASING.

Item No.	Qty.	Unit	Description and Price in Words	Unit Price	TOTAL PRICE
1	1	LS	Pavilion Kit including installation complete and in place for the lump sum price of _____ Dollars and _____ Cents	\$	\$
2	28	CY	Concrete Foundation including cushion sand as necessary, complete and in place for the unit price of _____ Dollars and _____ Cents per cubic yard.	\$	\$
3	31	SY	Concrete Sidewalk complete and in place for the unit price of _____ Dollars and _____ Cents per square yard.	\$	\$
4	6	EA	Stone Column Base complete and in place for the unit price of _____ Dollars and _____ Cents per each.	\$	\$
5	11	CY	Top Soil including rough grading complete and in place for the unit price of _____ Dollars and _____ Cents per cubic yard.	\$	\$

PLEASE NOTE: IF YOUR BID IS BASED ON CERTAIN ASSUMPTIONS, PLEASE INDICATE THOSE IN YOUR RESPONSE. WITH THE EXCEPTION OF THESE, THE CITY WILL ASSUME THAT A BIDDER WILL MEET ALL OF THE SPECIFICATIONS LISTED IN THIS BID.

The undersigned Proposer hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid, and he further agrees to commence work within ten (10) days after the date of written notice to do so, and commits to have 100% of the work and all contracts requirements on which he has Proposed complete within 60 consecutive calendar days:

Enclosed with this proposal is a Certified Check for Dollars (\$_____) or a Bid/Proposal Bond in the sum of 5% of bid which it is agreed shall be collected and retained by the Owner as liquidated damages in the event this proposal is accepted by the Owner within ninety (90) days after the bids are received and the undersigned fails to execute the contract and the required bond for the Owner within ten (10) days after the date said proposal is accepted, otherwise, said check or bond shall be returned to the undersigned upon request.

_____ Bidder (Firm Name)

By: _____

Title: _____
(President/Vice-President)

_____ Address

_____ City State Zip

_____ Phone _____ Fax

RECEIPT IS HEREBY ACKNOWLEDGED OF THE FOLLOWING ADDENDA TO THE CONTRACT DOCUMENTS:

Addendum No. 1 dated _____ Received

Addendum No. 2 dated _____ Received

Addendum No. 3 dated _____ Received



This project is funded through the U.S. Department of Housing and Urban Development's Community Development Block Grant Program and as such is subject to the requirements of the Davis-Bacon Act, which defines labor standard provisions applicable to federally-financed construction projects.

The following documents are enclosed to provide guidance and clarification in this regard:

1. "Notice to All Employees" Poster- must be posted at the jobsite where all employees can view at all times with the applicable wage rate decision.
2. "General Decision" – The applicable prevailing wage rate for this project as determined by the U.S. Department of Labor. This must be posted at the jobsite where all employees can view at all times with the "Notice to all Employees" Poster.
3. "Payroll (Department of Labor Form WH-347)"- Copy of the official payroll form which will be submitted weekly to the City of Carrollton Community Development Office.
4. "Payroll (Department of Labor Form WH-347) Instructions"- Copy of instructions to assist in completing the Payroll WH-347 to be compliant with regulations which govern federally-financed projects.
5. Federal Register- Department of Labor Employment Standards Administration, Wage and Hour Division"- The Davis-Bacon Act regulations which govern federally-financed projects.
6. "Federal Labor Standards Provisions"- A summary of the Davis- Bacon Act's applicable provisions.

Please note the following for compliance with regulations pertaining to federally-financed projects. The "Notice to All Employees" poster and General Wage Decision must be predominantly posted at the work site at all times. Payrolls for each week that the project is under construction must be submitted to the Community Development staff to confirm that all employees are paid the wage rate dictated by the Wage Decision. In addition to the weekly payrolls, Community Development staff will conduct unannounced interviews of employees to ensure that the wage rates are followed.

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

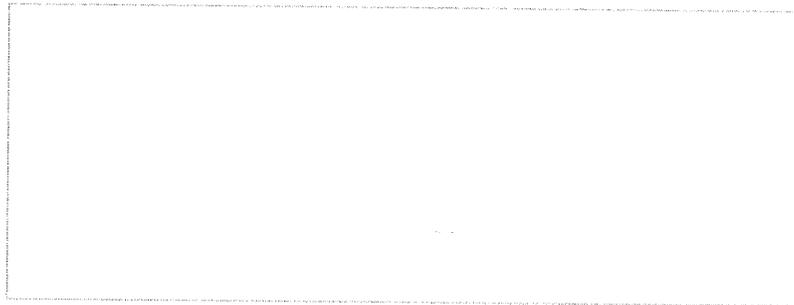
Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. 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

DERECHOS DEL EMPLEADO

BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

1-866-4-USWAGE

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



WWW.WAGEHOUR.DOL.GOV

General Decision Number: TX150291 01/02/2015 TX291

Superseded General Decision Number: TX20140291

State: Texas

Construction Type: Building

County: Dallas County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date

0 01/02/2015

ASBE0021-011 05/01/2013

Rates Fringes

ASBESTOS WORKER/HEAT & FROST

INSULATOR (Duct, Pipe and

Mechanical System Insulation)....\$ 21.52 7.15

BOIL0074-003 01/01/2014

Rates Fringes

BOILERMAKER.....\$ 23.14 21.55

CARP1421-002 04/01/2014

Rates Fringes

MILLWRIGHT.....\$ 25.30 8.30

ELEV0021-006 01/01/2014

Rates Fringes

ELEVATOR MECHANIC.....\$ 36.85 26.785+a

FOOTNOTES: a - A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGIO178-005 06/01/2014

Rates Fringes

POWER EQUIPMENT OPERATOR

(1) Tower Crane.....\$ 29.00 10.60

(2) Cranes with Pile

Driving or Caisson

Attachment and Hydraulic

Crane 60 tons and above.....\$ 28.75 10.60

(3) Hydraulic cranes 59

Tons and under.....\$ 27.50 10.60

IRON0263-005 12/01/2013

Rates Fringes

IRONWORKER (ORNAMENTAL AND

STRUCTURAL).....\$ 22.70 5.35

PLUM0100-005 07/01/2013

Rates Fringes

HVAC MECHANIC (HVAC Unit

Installation Only).....\$ 26.88 8.83

PIPEFITTER (Excludes HVAC

Pipe Installation).....\$ 26.88 8.83

SUTX2014-017 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 19.50	4.27
CARPENTER, Excludes Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 17.13	2.97
CAULKER.....	\$ 14.71	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.40	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.45	0.00
ELECTRICIAN (Alarm Installation Only).....	\$ 21.52	4.16
ELECTRICIAN (Communication Technician Only).....	\$ 16.40	26.31
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 20.03	3.04
ELECTRICIAN, Excludes Low Voltage Wiring and Installation of Alarms/Sound and Communication Systems.....	\$ 21.51	3.69
FORM WORKER.....	\$ 12.32	0.00
GLAZIER.....	\$ 16.15	2.13
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 10.04	2.31
INSTALLER - SIDING		

(METAL/ALUMINUM/VINYL).....	\$ 14.26	0.00
INSTALLER - SIGN.....	\$ 15.61	0.00
INSULATOR - BATT.....	\$ 13.00	0.00
IRONWORKER, REINFORCING.....	\$ 12.24	0.00
LABORER: Common or General.....	\$ 11.57	0.00
LABORER: Mason Tender - Brick...	\$ 11.00	1.70
LABORER: Mason Tender -		
Cement/Concrete.....	\$ 10.64	0.00
LABORER: Pipelayer.....	\$ 13.00	0.35
LABORER: Plaster Tender.....	\$ 14.50	0.00
LABORER: Roof Tearoff.....	\$ 11.28	0.00
LABORER: Landscape and		
Irrigation.....	\$ 12.00	0.23
LATHER.....	\$ 16.00	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 13.06	0.00
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 13.00	0.50
OPERATOR: Forklift.....	\$ 13.38	0.81
OPERATOR: Grader/Blade.....	\$ 13.05	0.00
OPERATOR: Loader.....	\$ 14.02	1.82
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt,		

Aggregate, and Concrete).....	\$ 18.44	0.00
PAINTER (Brush, Roller and		
Spray, Excluding		
Drywalling/Taping).....	\$ 13.60	2.24
PAINTER: Drywall		
Finishing/Taping Only.....	\$ 14.28	3.04
PLASTERER.....	\$ 15.37	0.00
PLUMBER (HVAC Pipe		
Installation Only).....	\$ 23.87	6.66
PLUMBER, Excludes HVAC Pipe		
Installation.....	\$ 22.70	5.65
ROOFER.....	\$ 17.19	0.00
SHEET METAL WORKER (HVAC Duct		
Installation Only).....	\$ 21.10	5.50
SHEET METAL WORKER, Excludes		
HVAC Duct Installation.....	\$ 24.88	7.23
SPRINKLER FITTER (Fire		
Sprinklers).....	\$ 21.25	15.55
TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 14.25	0.00
TRUCK DRIVER: 1/Single Axle		
Truck.....	\$ 16.40	0.81
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer		

Truck.....\$ 12.50 0.00
TRUCK DRIVER: Water Truck.....\$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====
Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed
in dotted lines beginning with characters other than "SU" or
"UAVG" denotes that the union classification and rate were
prevailing for that classification in the survey. Example:
PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of

the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion

date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

Wage and Hour Division (WHD)

Instructions For Completing Payroll Form, WH-347

WH-347 (PDF)

OMB Control No. 1235-0008, Expires 01/31/2015.

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

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) requires 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.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1 and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state

"See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Information is from <http://www.dol.gov/whd/forms/wh347instr.htm>



Federal Register

Wednesday,
December 20, 2000

Part V

Department of Labor

Office of the Secretary

29 CFR Part 5

**Labor Standards Provisions Applicable to
Contracts Covering Federally Financed
and Assisted Construction (Also Labor
Standards Provisions Applicable to
Nonconstruction Contracts Subject to the
Contract Work Hours and Safety
Standards Act); Final Rule**

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 5

RIN 1215-AB21

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor adopts as a final rule an amendment to the regulations, 29 CFR Part 5, which define the Davis-Bacon Act language *construction*, *prosecution*, *completion*, or *repair* at 29 CFR 5.2(j), and *site of the work* at 29 CFR 5.2(l). Specifically, this document revises the *site of the work* definition to include material or supply sources, tool yards, job headquarters, *etc.*, in the site of the work only where they are dedicated to the covered construction project and are adjacent or virtually adjacent to the location where the building or work is being constructed. Also changed is the regulatory definition of *construction* to provide that the off-site transportation of materials, supplies, tools, *etc.*, is not covered unless such transportation occurs between the construction work site and a dedicated facility located "adjacent or virtually adjacent" to the construction site.

This document also revises section 5.2(l)(1) to include within the *site of the work*, secondary sites, other than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed. In conjunction with this change, section 5.2(j) has been amended to provide that transportation of portion(s) of the building or work between a secondary covered construction site and the site where the building or work will remain when it is completed is subject to Davis-Bacon requirements.

EFFECTIVE DATE: January 19, 2001.

FOR FURTHER INFORMATION CONTACT:

Timothy Helm, Office of Enforcement Policy, Government Contracts Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3018, 200

Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 693-0574. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation does not contain any new information collection requirements and does not modify any existing requirements. Thus, this regulation is not subject to the Paperwork Reduction Act.

II. Background

A. Statutory and Regulatory Framework

Section 1 of the Davis-Bacon Act (DBA or Act) requires that "the advertised specifications for contracts * * * for construction, alteration and/or repair, including painting and decorating, of public buildings or public works * * * shall contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics * * * and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers *employed directly upon the site of the work* * * * the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, * * * and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work * * * ." 40 U.S.C. 276a (emphasis added).

Section 2 of the Act requires that every covered contract provide that in the event the contracting officer finds that "any laborer or mechanic employed by the contractor or any subcontractor *directly on the site of the work covered by the contract* has been or is being paid less than required wages, the government "may terminate the contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages" and to hold the contractor liable for the costs for completion of the work. 40 U.S.C. 276a-1 (emphasis added).

The Congress directed the Department of Labor, through Reorganization Plan No. 14 of 1950 (5 U.S.C. App., effective May 24, 1950, 15 FR 3176, 64 Stat. 1267), to "prescribe appropriate standards, regulations and procedures" to be observed by federal agencies responsible for the administration of the Davis-Bacon and related Acts "[i]n order to assure coordination of administration and consistency of enforcement." 64 Stat. 1267.

On April 29, 1983, the Department promulgated a regulation (29 CFR 5.2(l)) defining the term *site of the work* within the meaning of the Davis-Bacon Act (see 48 FR 19540). This regulation reflected the Department's longstanding, consistent interpretation of the Act's *site of the work* requirement. See, e.g., *United Construction Company*, Wage Appeals Board (WAB) Case No. 82-10 (January 14, 1983); *Sweet Home Stone*, WAB Case Nos. 75-1 & 75-2 (August 14, 1975); *Big Six, Inc.*, WAB Case No. 75-3 (July 21, 1975); *T.L. James & Co.*, WAB Case No. 69-2 (August 13, 1969); CCH Wage-Hour Rulings ¶ 26,901.382, Solicitor of Labor letter (July 29, 1942).

The Department's regulations provide a three-part definition of *site of the work*. The first part at 29 CFR 5.2(l)(1) provides that "the *site of the work* is the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site."

The second part at 29 CFR 5.2(l)(2) provides that "fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, *etc.*" are part of the *site of the work* provided they meet two tests—a geographic test of being "so located in proximity to the actual construction location that it would be reasonable to include them," and a functional test of being "dedicated exclusively, or nearly so, to performance of the contract or project."

The third part at 29 CFR 5.2(l)(3) states that fabrication plants, batch plants, borrow pits, tool yards, job headquarters, *etc.*, "of a commercial supplier or materialman which are established by a supplier of materials for the project before the opening of bids and not on the project site, are not included in the *site of the work*." In other words, facilities such as batch plants and borrow pits are not covered if they are ongoing businesses apart from the federal contract work.

The regulatory definition of the statutory terms *construction*, *prosecution*, *completion*, or *repair* in section 5.2(j)(1) applies the *site of the work* concept. It defines these statutory terms as including the following: [a]ll types of work done on a particular building or work *at the site thereof*, including work at a facility which is dedicated to and deemed a part of the *site of the work within the meaning of § 5.2(l)*—including without limitation (i) [a]lteration, remodeling, installation

(where appropriate) on the *site of the work* of items fabricated off-site; (ii) [p]ainting and decorating; (iii) [m]anufacturing or furnishing of materials, articles, supplies or equipment *on the site of the building or work* * * *; and (iv) [t]ransportation between the actual construction location and a facility which is dedicated to such construction and deemed a part of the *site of the work within the meaning of § 5.2(l)*. (Emphasis added.)

B. The Department of Labor's Longstanding Interpretation of the Regulatory Site of the Work Definition

Prior to the recent appellate court rulings, the Department's longstanding, consistent application of the regulatory definition of *site of the work*—the area where laborers and mechanics are to be paid at least the prevailing wage rates, as determined by the Secretary of Labor—included both the location where a public building or work would remain after work on it had been completed, and nearby locations used for activities directly related to the covered construction project, provided such locations were dedicated exclusively (or nearly so) to meeting the needs of the covered project.

The Wage Appeals Board, which acted with full and final authority for the Secretary of Labor on matters concerning the labor standards provisions of the Davis-Bacon and related Acts (see 29 CFR 5.1 and 7.1 (c)),¹ consistently interpreted 29 CFR 5.2(l) to include as part of the *site of the work*, for purposes of Davis-Bacon prevailing wage coverage, support facilities dedicated exclusively to the covered project and located within a reasonable distance from the actual construction site. Consistent with the regulations, the Board also treated the transportation of materials and supplies between the covered locations and transportation of materials or supplies to or from a covered location by employees of the construction contractor or subcontractor as covered Davis-Bacon work. See, e.g., *Patton-Tully Transportation Co.*, WAB No. 90–27 (March 12, 1993) (distances of 5.4 to 14 miles, and 16 to 60 miles); *Winzler Excavating Co.*, WAB No. 88–10 (October 30 1992) (12½ miles); *ABC Paving Co.*, WAB Case No. 85–14 (September 27, 1985) (3 miles).

C. Federal Appellate Decisions and Subsequent Decision of the Administrative Review Board (ARB)

The D.C. Circuit first discussed the Department's *site of the work* definition in *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board*, 932 F.2d 985 (D.C. Cir. 1991) (*Midway*). That case involved truck driver employees of the prime contractor's wholly owned subsidiary, who were delivering materials from a commercial supplier to the construction site. The material delivery truck drivers spent ninety percent of their workday on the highway driving to and from the commercial supply sources, ranging up to 50 miles round trip and stayed on the *site of the work* only long enough to drop off their loads, usually for not more than ten minutes at a time.

At issue before the D.C. Circuit was whether the “material delivery truckdrivers” were within the scope of *construction* as defined by the regulatory provision then in effect at section 5.2(j), which defined the statutory terms *construction, prosecution, completion, or repair* to include, among other things, “the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor.” The court held that “the phrase ‘mechanics and laborers employed directly upon the site of the work’ restricts coverage of the Act to employees who are working directly on the physical site of the public building or public work being constructed.” 932 F.2d at 992. The court further stated that “[m]aterial delivery truckdrivers who come onto the *site of the work* merely to drop off construction materials are not covered by the Act even if they are employed by the government contractor,” and consequently held that “29 CFR § 5.2(j), insofar as it includes off-site material delivery truck drivers in the Act's coverage, is invalid.” *Id.*

The court expressly declined to rule on the validity of the regulation defining the *site of the work* at 29 CFR 5.2(l). 932 F.2d at 989 n.6, 991 n.12. However, it expressed the view that Congress intended to limit Davis-Bacon coverage to “employees working directly on the physical site of the public building or public work under construction.” 932 F.2d at 990 n.9, 991.

On May 4, 1992, the Department promulgated a revised section 5.2(j) to accommodate the holding in *Midway*. 57 FR 19204. The revised regulation limits coverage of offsite transportation to “[t]ransportation between the actual

construction location and a facility which is dedicated to such construction and deemed a part of the *site of the work* within the meaning of § 5.2(l).” 29 CFR 5.2(j)(1)(iv) (1993).

In the two more recent rulings, *Ball, Ball and Brosamer v. Reich*, 24 F.3d 1447 (D.C. Cir. 1994) (*Ball*) and *L.P. Cavett Company v. U.S. Department of Labor*, 101 F.3d 1111 (6th Cir. 1996) (*Cavett*), the D.C. Circuit and Sixth Circuit, respectively, focused on the proper geographic scope of the statutory phrase *site of the work* in relation to borrow pits and batch plants established specifically to serve the needs of covered construction projects. In *Ball*, the D.C. Circuit ruled that the Department's application of section 5.2(l)(2) was inconsistent with the Act to the extent it covers sites that are at a distance from the actual construction location. The case involved workers at the borrow pit and batch plant of a subcontractor who obtained raw materials from a local sand and gravel pit and set up a portable batch plant for mixing concrete. The pit and batch plant were dedicated exclusively to supplying material for the completion of the 13-mile stretch of aqueduct that the prime contractor had contracted to construct. As described by the court, “the borrow pit and batch plant were located about two miles from the construction site at its nearest point.” 24 F.3d at 1449.

In holding that the Davis-Bacon prevailing wage requirements did not apply to the borrow pit and batch plant workers, the court cited *Midway*, in which it had found “no ambiguity in the text [of the Davis-Bacon Act]” and thought it clear that “the ordinary meaning of the statutory language is that the Act applies only to employees working directly on the physical site of the public building or public work under construction.” 24 F.3d at 1452. The court added that “the reasoning in *Midway* obviously bears on the validity of § 5.2(l)(2) to the extent that the regulation purports to extend the coverage of the Davis-Bacon Act beyond the actual physical site of the public building or public work under construction.” (*id.*), and accordingly ruled that “the Secretary's regulations under which *Ball* was held liable are inconsistent with the Davis-Bacon Act. See 29 CFR § 5.2(l)(1).” 24 F.3d at 1453. The court nevertheless indicated that the regulations at section 5.2(l)(2) might satisfy the geographic limiting principle of the Davis-Bacon Act and *Midway* if the regulatory phrase in section 5.2(l)(2) “so located in proximity to the actual construction location that it would be reasonable to include them” were

¹ On April 17, 1996, the Secretary redelegated jurisdiction to issue final agency decisions under, *inter alia*, the Davis-Bacon and related Acts and their implementing regulations, to the newly created Administrative Review Board (ARB or the Board). Secretary's Order 2–96 (Apr. 17, 1996), 61 FR 19978, May 3, 1996.

applied "only to cover batch plants and gravel pits located in actual or virtual adjacency to the construction site." 24 F.3d at 1452.

In *Cavett* (arising under the Federal-Aid Highway Act, a Davis-Bacon related Act), the Sixth Circuit held that truck drivers hauling asphalt from a temporary batch plant to the highway under construction three miles away were not entitled to Davis-Bacon prevailing wages. The contract involved resurfacing of an Indiana state road, and as characterized by the court, "the Department of Labor included in the *site of the work* both a batch plant located at a quarry more than three miles away from the highway construction project and the Indiana highway system that was used to transport materials from the batch plant to the construction project." 101 F.3d at 1113-1114.

Relying on the D.C. Circuit's reasoning in *Midway* and *Ball*, the Sixth Circuit disagreed with the views of the lower court that the statutory language was ambiguous and that the *Ball* decision recognized ambiguity in the statutory text when it declined to decide whether coverage could extend to batch plants adjacent to or virtually adjacent to the boundaries of the completed project. The Sixth Circuit reasoned that it was not inconsistent for the *Ball* court to "conclude that while a facility in virtual adjacency to a public work site might be considered part of that site, a facility located two (or in this case three) miles away from the site would not." 101 F.3d at 1115. Thus, agreeing with *Ball*, the Sixth Circuit concluded that the statutory language means that "only employees working directly on the physical site of the work of the public work under construction have to be paid prevailing wage rates." *Id.*

Subsequent to the rulings in *Midway*, *Ball*, and *Cavett*, the Department's Administrative Review Board (ARB) addressed the Davis-Bacon Act's *site of the work* provision in *Bechtel Contractors Corporation (Prime Contractor)*, *Rogers Construction Company (Prime Contractor)*, *Ball, Ball and Brosamer, Inc., (Prime Contractor)*, and *the Tanner Companies, Subcontractor*, ARB Case No. 97-149, March 25, 1998, reaffirming ARB Case No. 95-045A, July 15, 1996.

This case involved a dispute over whether the Davis-Bacon provisions applied to work performed at three batch plants established and operated in connection with construction work on the Central Arizona Project (CAP), a massive Bureau of Reclamation construction project consisting of 330 miles of aqueduct and pumping plants. The batch plants were located less than

one-half mile from various pumping stations that were being constructed as part of the project. The Board initially ruled on the case on July 15, 1996 (*Bechtel I*) and later reaffirmed that decision on March 25, 1998 (*Bechtel II*).

The Board observed that the D.C. Circuit's recent decision in *Ball* had "created a good deal of confusion with respect to the coverage of the DBA." *Bechtel I*, slip op. at 6. The Board declined to read *Ball* or *Cavett* to mean that the statutory phrase "directly upon the site of the work" limits the wage standards of the DBA to "the physical space defined by contours of the permanent structures that will remain at the close of work." *Id.* Rather, the Board read *Ball* and *Cavett* as only precluding the Secretary from enforcing section 5.2(l)(2) of the regulations in a manner that did not respect the geographic limiting principle of the statute, while reserving ruling on section § 5.2(l)(1), since that provision was not at issue in those cases. *Bechtel II*, slip op. at 5; *Bechtel I*, slip op. at 6. The Board stated that interpretation of § 5.2(l)(1) requires examination of the question of whether the temporary facilities are so "located in virtual adjacency" to the site of the work that it would be reasonable to include them. *Id.*

The Board found that the work performed at the plants satisfied the test set out in § 5.2(l)(1), since aerial photographs of the construction sites showed the temporary batch plants to be located on land integrated into the work area adjacent to the pumping stations. The Board believed there was no principled basis for excluding the batch plant workers since they were employed on sites of the work to the same extent as the workers who cleared the land and the workers who inventoried, assembled, transported or operated tools, equipment or materials on nearby or adjacent property. The Board also observed that

it is the nature of such construction, e.g., highway, airport and aqueduct construction, that the work may be long, narrow and stretch over many miles. Where to locate a storage area or a batch plant along such a project is a matter of the contractor's convenience and is not a basis for excluding the work from the DBA. The map of the project introduced at hearing * * * abundantly illustrates that the project consisted of miles of narrow aqueduct connected by pumping stations. The only feasible way to meet the needs of the aqueduct construction was to have the concrete prepared at a convenient site and transported to the precise area of need. This equally holds true for the storage and distribution of other materials and equipment. Faced with such a project, the Board finds that work performed in actual or

virtual adjacency to one portion of the long continuous project is to be considered adjacent to the entire project.

Bechtel I, slip op. at 6.

D. The Proposed Rule

The Department, by Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on September 21, 2000 (65 FR 57270), proposed for public comment an amendment to the regulations that define the Davis-Bacon Act language *construction, prosecution, completion, or repair* at 29 CFR 5.2(j), and *site of the work* at 29 CFR 5.2(l). The Department explained that revisions to these definitions are needed (1) to clarify the regulatory requirements in view of the three appellate court decisions, which concluded that the Department's application of these regulatory definitions was at odds with the language of the Davis-Bacon Act that limits coverage to workers employed "directly upon the site of the work," and (2) to address situations that were not contemplated when the current regulations were promulgated.

Specifically, the Department proposed to revise the *site of the work* definition to include material or supply sources, tool yards, job headquarters, etc., only where they are dedicated to the covered construction project and are adjacent or virtually adjacent to a location where the building or work is being constructed. The Department also proposed to revise the regulatory definition of *construction* to provide that the off-site transportation of materials, supplies, tools, etc., is not covered, except where such transportation occurs between the construction work site and a dedicated facility located "adjacent or virtually adjacent" to the construction site. However, the proposal did not alter the Department's view that truck drivers employed by construction contractors and subcontractors must be paid Davis-Bacon wage rates for any time spent on-site which is more than *de minimis*. Moreover, the Department did not propose to define the terminology "adjacent or virtually adjacent," leaving this question to be determined on a case-by-case basis, given that the actual distances will vary depending upon the size and nature of the project in question.

The Department also proposed to revise the *site of the work* definition so that it will address certain construction situations that the Department believes warrant coverage, which were not contemplated by the current regulations. The Department explained, by way of example, that new construction

technologies have been developed that make it practical and economically advantageous to build major segments of complex public works, such as lock and dam projects and bridges, at locations some distance up-river from the locations where the permanent structures will remain when their construction is completed. The Department noted that, in such situations, much of the construction of the public work is performed at a secondary site other than where it will remain after construction is completed, and therefore, believed that it is reasonable and consistent with the language and intent of the statute to cover such a location where it has been established specifically for the purpose of constructing a significant portion of a "public building or public work". The Department further stated that, to the best of its knowledge, projects built in such a manner are currently rare, and that it did not anticipate that the proposed rule would create a major exception to the normal rule limiting the *site of the work* to the place where the building or work will remain when the construction is completed. The Department, therefore, proposed to revise § 5.2(l)(1) to include within the *site of the work*, secondary sites, other than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is actually constructed.

In conjunction with this change, the Department also proposed to amend § 5.2(j) to provide that transportation of portion(s) of the building or work between a secondary covered construction site and the site where the building or work will remain when it is completed is subject to Davis-Bacon requirements. The Department stated that the *site of the work*, under these circumstances, would be literally moving between the two work sites, and therefore the laborers or mechanics who transport these portions or segments of the project should be reasonably viewed as "employed directly upon the site of the work."

The Department received 50 responses to the NPRM during the public comment period: two from federal agencies: the U.S. Army Corps of Engineers and the Department of the Air Force; four from state Departments of Transportation (DOT's) in Utah, Oregon, Iowa and West Virginia; thirteen contractor associations: the Associated General Contractors of America, Inc. (AGC) and the California AGC, AGC of Washington, the New York State AGC

Chapter, the General Contractors Association of New York (which represents the heavy construction industry active in New York City), Associated Builders and Contractors, Inc. (ABC), the American Road & Transportation Builders Association (ARTBA), the National Asphalt Pavement Association (NAPA), the National Ready Mixed Concrete Association (NRMCA), an attorney for the California Dump Truck Owners Association, the Wisconsin Transportation Builders Association (WTBA), and the Contractors Association of Western Pennsylvania; the American Society of Civil Engineers (ASCE); an engineering firm—Johansen & Tuttle Engineering, Inc.; seventeen construction companies, ten reflecting AGC views; and the Pinal Gila Community Child Services, Inc.

Also submitting comments were ten union and union-supported organizations: the Building and Construction Trades Department, AFL-CIO (Building Trades), the International Union of Operating Engineers (IUOE), the Laborers International Union of North America (LIUNA), and the International Brotherhood of Teamsters, AFL-CIO; the National Alliance for Fair Contracting, and the Illinois Foundation for Fair Contracting (FFC), the Indiana-Illinois FFC, and the Midwest FFC; and the International Brotherhood of Electrical Workers, Local Unions Nos. 193 and No. 146 (Springfield and Decatur, Illinois, respectively). An individual who has been involved in wage regulation for twelve years also provided comments.

III. Comments and Analysis

The following is an analysis of all the principal comments received. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each proposed revision, the analysis contains a description of the major comments and the Department's conclusions regarding those comments.

A. *Site of the Work*—§ 5.2(l)

1. Limiting Coverage of Dedicated Facilities to Those That Are "Adjacent or Virtually Adjacent" to the Construction Location

The Building Trades, LIUNA, the Teamsters and the Operating Engineers oppose this change, urging the Department to adopt a rule that would extend prevailing wage coverage to locations that are dedicated exclusively, or nearly so, to the performance of the covered project without regard to their

geographic proximity to the actual construction site. The General Contractors Association of New York, Inc. also opposes this change, urging the Department to retain its previous interpretation of the law, *i.e.*, covering facilities that are located "within a reasonable distance" from the actual construction site. Johansen & Tuttle Engineering, Inc. expressed concern that disputes would arise if everyone working on a Davis-Bacon contract were not paid on the same basis.

The Building Trades, based on its reading of the legislative history of the Davis-Bacon Act, stated that the term "site of the work" was intended to refer to *any* location where tasks relating to construction of the public building or public work are performed by laborers and mechanics employed by contractors and subcontractors otherwise covered by the Davis-Bacon or related Acts. The Building Trades stated that the merits of this legislative history argument have never been considered by the courts, and therefore, the Secretary is not precluded from adopting a site of the work definition that extends coverage beyond the physical site of the public building or public work under construction. The Operating Engineers commented that the statutory language "directly upon the site of the work" is ambiguous, and can fairly be construed to mean any location where work in furtherance of the contract occurs.

The Department believes that both the D.C. Circuit and the Sixth Circuit have spoken clearly on these issues and that the Department is constrained by these courts' decisions in *Ball* and *Cavett*, respectively, to limit prevailing wage coverage of off-site, dedicated support facilities to those that are either adjacent or virtually adjacent to the construction location.

The Building Trades and LIUNA both stated that the same justification for including locations established specifically for the purpose of constructing a significant portion of a building or work in the definition of "site of the work" for Davis-Bacon purposes applies with equal force to locations used for activities such as temporary batch plants, fabrication facilities, borrow pits and tool yards that are directly related to the covered construction project, provided those locations are dedicated exclusively or nearly so to supporting that project. In the Department's view, the underlying justification for covering secondary construction sites where significant portions of the building or work are being constructed has no application to dedicated support facilities, such as those mentioned in the regulation. The

basis for the Department's proposed change (discussed below), to include secondary construction sites where a significant portion of the public building or work called for by the contract is constructed, is that the Department views such locations as the actual physical site of the public building or work being constructed. On the other hand, the Department does not view the location of dedicated support facilities, which typically involve the furnishing of materials or supplies, as an actual physical location of the public building or public work. Rather, such dedicated support facilities are viewed as "included" within the "site of the work" only where they are located on, adjacent, or virtually adjacent to the site of the public building or public work.

In its comments, the AGC questioned whether a facility located two miles away from a Davis-Bacon construction site is "adjacent or virtually adjacent" to it, and expressed concern that the Department's proposal provides inadequate guidance as to the geographical range for covering support facilities. The AGC of Texas urged the Department to define "site of the work" precisely and to exempt facilities not located directly upon the physical site of the work. The ABC, on the other hand, sees no purpose to engaging in rulemaking to define "adjacent," because it means "next to; adjoining," and any attempts to expand the Davis-Bacon Act's coverage to non-adjacent locations violates the holdings in *Ball* and *Cavett*. The Air Force stated that it took no exception to this proposed change, based on its assumption that the Department would "not attempt to expand the term into something more closely resembling its previous 'in proximity' test."

The state DOT's of Oregon, Utah, Iowa, and West Virginia, and the National Ready Mixed Concrete Association stated that the Department should clarify the meaning of "adjacent or virtually adjacent" in terms of the distance from the actual construction site within which dedicated support facilities will be deemed covered. The West Virginia DOT recommended that facilities located one-fourth of a mile from the construction site be considered "virtually adjacent"; the Iowa DOT suggested that "virtually adjacent" should be defined as a specific distance, such as "1,500 meters from the limits of the work site or from the project right of way, etc."; and the Utah DOT recommended setting the distance at "approximately one-half mile, with the qualifier that if the facility is set up more than a half-mile away just to avoid

paying Davis-Bacon, [the contractor] must pay Davis-Bacon anyway."

The Operating Engineers, on the other hand, commented that, if the Department continues to include a geographic test in its site of the work definition, it should not define the terminology "adjacent or virtually adjacent" because a strict limitation in a definition of those terms would have the potential to create results contrary to the intent of the Act. The Operating Engineers agreed with the Department's observation in its NPRM that "actual distance may vary depending upon the size and nature of the project," and commented that "[t]he Wage and Hour Division must have the latitude to reach results that make sense given the parameters of the particular project under construction."

The U.S. Army Corps of Engineers commented that "[c]ase by case referral to the Department for resolution of 'actual or virtual adjacency' would disrupt both contract administration and effective management of project appropriations." However, the Corps' discussion of this concern related primarily to the Department's proposal to expressly cover secondary sites where substantial portions of the project are constructed, which does not contain an "actual or virtually adjacent" limitation. In this same vein, the Nicholas Grant Corporation commented that if the question of whether a support facility is "adjacent or virtually adjacent" is to be determined on a case-by-case basis, such determination "must be made prior to bid time so the contractor can bid the project with reasonable knowledge that their construction costs are covered."

After review of the relevant comments, the Department continues to be of the view that it should not include a precise definition of the terms "adjacent or virtually adjacent" in its regulations. The Department believes that by using the term "virtual" the courts intended the Department to apply the "site of the work" requirement narrowly, but with common sense and some flexibility. As the Board observed in *Bechtel II*, "[i]t is not uncommon or atypical for construction work related to a project to be performed outside the boundaries defined by the structure that remains upon completion of the work." The Board cited as an example construction cranes that are typically positioned outside the permanent site of the construction because it would not be possible to place the crane where the building is to stand. Another common example would be work at a temporary batch plant constructed for the exclusive purpose of supplying asphalt

for the construction of a highway project. It would certainly appear unlikely for practical reasons that the contractor would install the batch plant directly on the site of the highway because it would stand in the way of the paving process. Rather, the batch plant would more likely be located somewhere off to the side of the highway, *i.e.*, nearby, but not directly upon the site of where the highway will remain upon completion. Thus, while the Department clearly recognizes that the courts have narrowed the geographic limitation for covering temporary support facilities as previously applied under the regulations, we also believe that the courts allowed the Department some leeway to determine whether such facilities are in "virtual adjacency" to the permanent construction site.

Since it is apparent that in certain circumstances dedicated support facilities not located directly on the site where the permanent construction will remain should be covered, the question arises of just how far such a facility can be from the actual construction site and still be considered part of the "site of the work." The Department is of the opinion that establishing a specific maximum distance would be ill-advised because it would create an arbitrary, artificial benchmark for determining Davis-Bacon coverage that ignores the differing nature of various construction processes. This would enable contractors to locate dedicated support facilities immediately beyond any such boundary solely for the purpose of avoiding Davis-Bacon coverage, thereby defeating the purposes of the Act.

The Department has concluded that the only fair and practical method for determining whether a temporary facility is virtually adjacent to the "site of the work" is on a case-by-case basis. The Department believes that the Board's analysis in the two *Bechtel* decisions, following close on the heels of the issuance of the court opinions in *Ball* and *Cavett*, provides an excellent example of such a determination and, as such, provides considerable guidance on how the amended definition will be applied by the Department. In the *Bechtel* matter, the record was unclear as to the exact measurement of distance between the location of the temporary batch plants and the permanent location of the pumping stations, which were constructed as part of the 330-mile aqueduct project. The distances were estimated at somewhere between several hundred feet and one-half mile. Because of the narrow, linear nature of the project, concrete from the batch plants was delivered to construction locations up to 15 miles from the batch plants.

Based in part on its examination of aerial photographs, the Board determined that the batch plants were located "on land integrated into the work area adjacent to the pumping plants," and that "[w]orkers at the batch plants were employed on the sites of work equally as much as the workers who cleared the land and the workers who inventoried, assembled, transported or operated tools, equipment or materials on nearby or adjacent property." *Bechtel I*, slip op. at 6. The Board concluded that "in examining a project like the [Arizona aqueduct project]—a huge project stretching over approximately 330 miles—it is not unreasonable' to consider the three batch plants in 'virtual adjacency' to the project, given their proximity to the pumping stations as clearly shown by the photographs in evidence." *Bechtel II*, slip op. at 6.

The Department believes that the *Bechtel* matter illustrates the difficulties inherent in establishing a specific distance for defining the terms, "virtually adjacent." As demonstrated in *Bechtel*, it can be almost impossible to determine the exact outer boundaries of large public works projects, such as the aqueduct project in *Bechtel* or a major highway construction project. Thus, a numerical figure representing the maximum distance a dedicated facility can be located from the construction site would be arbitrary and impractical to apply. In addition, the Department does not believe that a single linear measurement of distance could be fairly applied to determine the coverage of all off-site facilities, given that Davis-Bacon projects vary to such a wide degree in size and nature. See, e.g., *Bechtel II*, slip op. at 6. For example, it was reasonable, given the magnitude and the nature of the aqueduct project in *Bechtel*, for the Board to conclude that the batch plants located somewhere up to one-half mile from the actual construction sites (the pumping stations) were located "virtually adjacent" to the project. In contrast, the "site of the work" limits applicable to a project for the construction of a single building in an urban location would likely be more constricted. In such a case, a dedicated facility located only a few city blocks away from the building project would most likely *not* be considered "virtually adjacent" for Davis-Bacon purposes.

The Department believes that in practice the determination of the site of the work will not be difficult. In fact, the *Bechtel* case is the only case we are aware of in which the issue has arisen since the *Ball* and *Cavett* decisions. The Department would expect contracting

agencies and contractors to perform a practical analysis similar to that employed by the Board in the *Bechtel* decisions to determine whether temporary facilities established nearby to serve the federal or federally-assisted project are covered by the Davis-Bacon provisions, just as they do with respect to other issues as a regular matter.

2. Inclusion of Secondary Sites Established Specifically for the Performance of the Davis-Bacon Covered Contract and at Which a Significant Portion of the Public Building or Work Called for by the Contract Is Constructed

In support of this proposed change, LIUNA, the Building Trades, and the Operating Engineers have each, to a varying degree, provided detailed descriptions of the innovative construction techniques developed and currently in use, which allow significant portions of public buildings and public works to be constructed at locations other than the final resting place of the building or work. The Building Trades stated that the amount of so-called "off-site" work specifically related to many construction projects has steadily expanded in ways never contemplated when the Davis-Bacon Act was amended in 1935 to include the language "directly upon the site of the work." The Operating Engineers stated that Congress clearly intended to cover actual construction sites, but could never have envisioned that "significant portions" of public works could be constructed other than at the final resting place of the public work. The General Contractors Association of New York similarly commented that new construction technologies have made it practical for "major segments of complex public works" to be built off-site and then transported by barge or rail to be put into place at the final location, and that such projects were not contemplated by the Department's current rules because such technology did not exist at the time of their promulgation.

LIUNA, the Building Trades, and the Operating Engineers each cite the Braddock Locks and Dam project on the Monongahela River in Allegheny County, Pennsylvania as an example that illustrates the compelling need for modification of the current site of the work regulation. The Braddock project involves the construction of two massive floating structures, each about the length of a football field, which would comprise the vast bulk of the new gated dam. The actual construction of these floating structures is at an upriver location on or near the water.

They are then floated down the river to the point where they are submerged into the dam and gate piers. According to these commenters, the Army Corps of Engineers, which is contracting for this work, views the construction of these 300-foot structures as "off-site" work, and thus, has taken the position that the workers who build the structures are not entitled to Davis-Bacon coverage. Citing language in the *Cavett* decision, LIUNA stated that there is "no doubt" that the place where the floating structures will be constructed is "the actual physical site of the public work under construction." 101 F.3d at 1115.

The Operating Engineers also cited two Wage Appeals Board cases as demonstrating the need for this regulatory change—*ATCO Construction, Inc.*, WAB Case No. 86-1 (August 22, 1986), and *Titan IV Mobile Service Tower*, WAB Case No. 89-14 (May 10, 1991). The Operating Engineers suggested that the absence of a regulation allowing coverage of a construction site other than the place where the building or work will remain resulted in the Board inappropriately applying the geographic test set forth in section 5.2(l)(2) in reaching inconsistent conclusions regarding coverage of the remote construction locations that were at issue in those two cases.

In *ATCO*, the Board found that Davis-Bacon coverage applied to workers at a temporary dedicated facility in Portland, Oregon that was established exclusively for the construction of about 405 military housing units, which were then shipped 3,000 miles for final placement at Adak Naval Air Station in the Aleutian Islands, Alaska. The Operating Engineers stated that the Board reached the right result for the wrong reason, and by finding the construction facility in Portland to meet the regulatory geographic test of reasonable proximity to the Naval Air Station 3,000 miles away, left the Department vulnerable to criticism from the courts. In *Titan*, the Board reached an opposite result with respect to workers who constructed several "modular units" that were to be transported to a distant location where they would be assembled into a 300-foot mobile service tower for building and servicing Titan missiles. According to the Operating Engineers, the largest of the modular units was equivalent in size to a three-story building. The units were originally constructed at a dedicated facility in Tongue Point, Oregon, and then transported by barge to Vandenberg AFB, which was located approximately 1,000 miles away, where the units were finally assembled. The Board found that the Tongue Point location did not

satisfy the geographic prong of the two-part site of work test for covering off-site facilities, and thus, denied Davis-Bacon coverage to nearly 400 construction workers, notwithstanding that they performed 40% of the total amount of work called for by the contract.

The Operating Engineers stated that there is no rational basis for the selection of one site of work over another where substantial construction work occurs at more than one site, and that the proposed change to section 5.2(l)(1) will ensure that Davis-Bacon coverage applies to projects such as the Braddock Lock and Dam, the Titan missile service tower, and the ATCO housing unit project, where significant portions of a public work are constructed at dedicated sites other than where the public work will remain.

The ABC, AGC, several other contractor associations, individual contractors, the Oregon Department of Transportation, the Air Force and the Army Corps of Engineers opposed this proposed change to the definition of "site of the work," stating it amounts to an expansion of statutory coverage and would result in vague standards for coverage without objective criteria for determining what constitutes a "significant portion" of the project. The ABC also commented that the Department has not provided any credible basis for its assertion that this proposed change will not create a "major" exception to the normal rule limiting the site of the work to the place where the building or work will remain. The ABC also expressed concern that the new rule would threaten to expand the Act's coverage to "many existing off-site pre-fabrication specialty contractors."

The Air Force and the Army Corps of Engineers expressed concern that this proposed change would present significant procurement and administrative problems. The Air Force states that agencies would be compelled in some instances "to solicit and award contracts without knowing where all of the various possible sites of 'significant work' may be located after award, and that some solicitations would require 'numerous wage determinations to cover all the possible 'areas' where some construction might occur, depending upon which bidder might be awarded the contract. The Corps similarly commented that "[a]ny effort on the part of the contracting agency to 'guess' the location of potential secondary sites planned by potential bidders can not be fairly administered."

After review of these comments, the Department continues to be of the view that the current *site of the work*

definition does not adequately address certain rare situations that warrant coverage. As many of the comments have demonstrated, new construction technologies currently exist that make it practical and economically advantageous to build major segments of complex public works, such as lock and dam projects and bridges, at locations some distance up-river from the locations where the permanent structures will remain when their construction is completed. Several commenters have provided actual examples of current, ongoing projects where payment of Davis-Bacon wages for work performed at the secondary locations is in dispute. These comments have also shown that, in such situations, much of the actual construction of the public work itself is performed at a secondary site other than where it will remain after construction is completed.

The existing regulatory definition in § 5.2(l)(1) states that coverage is "limited to the physical place or places where construction called for in the contract will remain * * * and other adjacent or nearby property." As the Operating Engineers demonstrated with reference to past Wage Appeals Board cases, literal application of the current regulatory language can result in the exclusion from coverage construction at a location some distance from the final resting place of a project, even if a significant portion of the project is actually constructed at that location. The Department does not believe such a result to be consistent with either the language or intent of the Davis-Bacon Act.

The Department does not believe that this change constitutes an expansion of statutory coverage beyond the geographical requirement "directly upon the site of the work," as several commenters have alleged. As the court in *Cavett* stated, "The statutory phrase 'employed directly on the site of the work' means that only employees working directly on the physical site of the public work under construction have to be paid prevailing wages." 101 F.3d at 1115. The Department believes that when a significant portion of a project, like the 300-foot floating structures that comprise the Braddock Lock and Dam, the three-story Titan missile service tower modules, or the 405 Adak housing units, is constructed at a secondary location, such location is, in actuality, the physical site of the public work being constructed. Or, as the Operating Engineers succinctly stated, "it is the covered construction project." Therefore, the Department concludes that a location established specifically for the purpose of

constructing a significant portion of a "public building or public work" is reasonably viewed as an independent "site of the work" within the meaning of the Davis-Bacon Act and that employees performing construction work at such a location should receive prevailing wages, regardless of the distance between the location of their construction site and the final resting place of the project.

The Department emphasizes that it does not intend that this change to the definition of the site of the work will create a major exception to the normal rule limiting the site of the work to the place where the building or work will remain when the construction is completed. Ordinary commercial fabrication plants, such as plants that manufacture prefabricated housing components, would *not* be covered by this amendment because they are not "established specifically for the performance of the contract or project." Furthermore, ordinary material supply sites, even if dedicated to the project, would not involve the construction of a "significant portion" of the building or work being constructed pursuant to the government contract. This definitional change is designed to apply Davis-Bacon coverage only to locations where such a large amount of construction is taking place that it is fair and reasonable to view such location as a site where the public building or work is being constructed. In the past, the Wage Appeals Board has termed such a situation an "anomaly," but the Department has treated such anomalous situations with inconsistent results under the current regulations (*ATCO* and *Titan*). It is the Department's intention in this rulemaking to require in the future that workers who construct significant portions of a federal or federally-assisted project at a location other than where the project will finally remain, will receive prevailing wages as Congress intended when it enacted the Davis-Bacon and related Acts.

Following review of the comments, the Department continues to be of the view that it is rare for projects to be built in this manner. While LIUNA in particular has described various types of structures that can be built at one location and then transported to another, the commenters, as a whole, have identified only two ongoing lock and dam projects (Braddock and Olmsted) as examples of projects that could fall within the criteria of this amendment. Additionally, the Department is aware of only two administrative cases considered by the Department's Wage Appeals Board or Administrative Review Board where a

significant portion of a project was constructed at a location established specifically for the project before being transported to another location for installation (*ATCO* and *Titan*).

With respect to the comments urging the Department to specifically define the terms "significant portion," we believe that it is both unnecessary and unwise to do so. We think that a precise definition would be unwise because the size and nature of the project will dictate what constitutes a "significant portion" under this provision. We believe such a definition to be unnecessary because, in those rare situations where projects are constructed in this manner, application of this provision should normally be obvious. However, if the agency is unable to determine whether this provision should apply, we anticipate that any question would typically arise early in the procurement process so that advice could be obtained from the Department of Labor in a timely manner.

We appreciate the concerns raised by the contracting agencies since some changes in their procedures may be necessary. However, since these projects will likely be rare, the Department does not anticipate that this amendment will place any significant additional burden on the contracting agencies with respect to their procurement practices. The Department recognizes that contracting agencies will need a mechanism to ascertain in advance the locations where potential bidders would build the project so that wage determinations may be obtained for each location. The Department believes these mechanisms are best developed through the agencies' procurement regulations. The Department points out that most wage determinations are published and widely available. The Department is of the view that, in most instances where a significant portion of a major project is to be constructed at a secondary site, the possible locations of the construction sites would be limited as a practical matter, and therefore, it would not be onerous for the contracting agency to include a wage determination covering the possible construction locations when soliciting bids for the project. One option may be the two-step process utilized under the McNamara-O'Hara Service Contract Act. See 29 CFR 4.54(b).

B. Coverage of Transportation—§ 5.2(j)

1. Limiting Coverage of Off-Site Transportation of Materials, Supplies, Tools, etc., to Transportation Between the Construction Work Site and a Dedicated Facility Located "Adjacent or Virtually Adjacent" to the Construction Site

The Building Trades, LIUNA and the Teamsters oppose this amendment, urging the Department to reinstate or repromulgate the definition of "construction, prosecution, completion, or repair" that was withdrawn in 1992, which included transportation of materials and supplies by laborers and mechanics employed by contractors and subcontractors covered by the Davis-Bacon and related Acts. These commenters maintained that the Department's revision of section 5.2(j) in response to *Midway* to limit coverage of off-site transportation to that occurring between the actual construction site and dedicated, nearby facilities was unnecessary. In their view, *Midway* did not address the question of whether the regulatory definition of "construction," in effect at that time, could validly be applied to truck drivers hauling off-site to and from projects covered by the so-called "related Acts," which require the payment of Davis-Bacon prevailing wages on federally-assisted projects. They note that the related Acts generally do not contain the "site of the work" language relied upon by the court in *Midway*. They believe that the Department should in each case look to the particular statute applicable to the project to determine whether it contains a site-of-work limitation that would preclude coverage of off-site truck driving activities.

This request in effect asks the Department to apply different standards for prevailing wage coverage to projects subject to the Davis-Bacon Act from those applicable to the related Acts. The Department believes that such a result would run contrary to the spirit and intent of Reorganization Plan No. 14 of 1950, which authorizes the Secretary of Labor to "prescribe appropriate standards, regulations, and procedures" in order to "assure consistent and effective enforcement" of the labor standards provisions of the Davis-Bacon Act and the related Acts. Coverage standards that would differ for the same type of work depending upon the applicable statute would likely result in confusion in the construction industry among both contractors and contracting agencies and likely would lead to labor dissatisfaction and disputes. Furthermore, the Sixth Circuit rejected the notion that different coverage

standards might be applied to related Act projects, when it concluded that the Federal-Aid Highways Act, a Davis-Bacon related Act, "incorporates from the Davis-Bacon Act not only its method of determining prevailing wage rates but also its method of determining prevailing wage coverage. In other words, if 29 CFR 5.2(l) is inconsistent with the Davis-Bacon Act it must also be inconsistent with the Federal-Aid Highways Act." *Cavett*, 101 F.3d at 1116. An exception would of course exist if the language and/or clear legislative history of a particular Davis-Bacon related Act reflected clear congressional intent that a different coverage standard be applied. See, e.g., the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996.

The AGC and the ABC oppose the proposed amendment to section 5.2(j), contending that the regulation should instead be amended to "exempt" delivery truck drivers from Davis-Bacon coverage while engaged in hauling activities, regardless of who employs them and how much time they spend on-site. The AGC, the ABC, the Wisconsin Transportation Builders Association and the American Road & Transportation Builders Association also object to the Department's statement in the NPRM that "truck drivers employed by construction contractors and subcontractors must be paid at least the rate required by the Davis-Bacon Act for any time spent on-site which is more than *de minimis*." 65 FR 57272. The AGC states that the "*de minimis*" threshold is "subjective, vague and ambiguous," but assuming such a threshold is appropriate, 50 percent would be the proper standard, *i.e.*, only where the employee spends more than 50 percent of his or her total time in a workweek performing work as a laborer or mechanic on-site should the worker be compensated at prevailing wage rates.

The Department disagrees that *Midway* exempts all material delivery truck drivers regardless of how much time they spend on the site of the work. Clearly, truck drivers who haul materials or supplies from one location on the site of the work to another location on the site of the work are "mechanics and laborers employed directly upon the site of the work," and therefore, entitled to prevailing wages. Likewise, truck drivers who haul materials or supplies from a dedicated facility that is adjacent or virtually adjacent to the site of the work pursuant to amended section 5.2(l) are employed on the site of the work within the

meaning of the Davis-Bacon Act and are entitled to prevailing wages for all of their time spent performing such activities.

It is also the Department's position, as stated in the NPRM, that truck drivers employed by construction contractors and subcontractors must be paid at least Davis-Bacon rates for any time spent on-site which is more than de minimis. It must be noted that this is not a regulatory change, nor is it a subject of this rulemaking. However, the Department will provide some discussion on this issue in order to provide some clarification as to its position.

In the wake of *Midway* and the corresponding change to our regulations, the Department no longer asserts coverage for time spent off-site by material delivery truck drivers. *Midway* determined that material delivery truck drivers are not covered because their work is not performed on the site of the work, not because of the type of work they perform. The court held "that the Act covers only mechanics and laborers who work on the site of the federally-funded public building or public work, not mechanics and laborers employed *off-site*, such as suppliers, materialmen, and material delivery truckdrivers, regardless of their employer." 932 F.2d 992 (emphasis added). Thus, *Midway* provided material delivery truck drivers no blanket exception to Davis-Bacon coverage, as some commenters seem to suggest.

Giving the Act a literal reading, as the courts have done in *Midway*, *Ball*, and *Cavett*, all laborers and mechanics, including material delivery truck drivers, are entitled to prevailing wages for any time spent "directly upon the site of the work." The *Midway* court noted that the *Midway* truck drivers came on-site for only ten minutes at a time to drop off their deliveries and that the time spent "directly upon the site of the work" constituted only ten percent of their workday, but that no one had argued in the case that the truckdrivers were covered only during that brief time. Our reading of *Midway* does not preclude coverage for time spent on the site of the work no matter how brief. However, as a practical matter, since generally the great bulk of the time spent by material truck drivers is off-site beyond the scope of Davis-Bacon coverage, while the time spent on-site is relatively brief, the Department chooses to use a rule of reason and will not apply the Act's prevailing wage requirements with respect to the amount of time spent on-site, unless it is more than "de minimis." Pursuant to this

policy, the Department does not assert coverage for material delivery truckdrivers who come onto the site of the work for only a few minutes at a time merely to drop off construction materials.

2. Covering Transportation of Portions of the Building or Work Between a Secondary Covered Construction Site and the Site Where the Building or Work Will Remain When It Is Completed

The Department received only a few comments in connection with this proposed change. The ABC stated that "the Department has no authority to extend the Act's coverage to the nation's highways or rivers for the action of transporting items of any kind to or from a construction site, or between sites of any kind." The ABC further stated that the Department's explanation that the site of the work is "literally moving" between the two work sites is "completely unsupported and contrary to law." The American Road & Transportation Builders Association objected to this provision on the grounds that it will increase transportation costs. The Army Corps of Engineers stated that "moving sites of work" is an impractical concept because multiple wage determinations might have to be issued in cases where the project was transported across more than one wage determination area. The Foundations for Fair Contracting favored this proposal.

The Department does not anticipate that this proposed change will have a substantial impact since the Department believes that the instances where substantial amounts of construction are performed at one location and then transported to another location for final installation are rare. Thus, the Department believes that this type of transportation activity will occur rarely. The Department nonetheless continues to believe that workers who are engaged in transporting a significant portion of the building or work between covered sites, as contemplated in § 5.2(l)(1), are "employed directly upon the site of the work," and therefore, are entitled to prevailing wages, provided they are "laborers and mechanics" under the Act. However, not included in such coverage would be the separate transportation of materials and supplies between the two covered "sites of the work." With respect to the Corps' concern that multiple wage determinations might apply in some instances, the Department has made an administrative determination that when faced with the prospect that transportation will take place in more

than one wage determination area, the applicable wage determination will be the wage determination for the area in which the construction will remain when completed and will apply to all bidders, regardless of where they propose to construct significant portions of the project.

IV. Executive Order 12866; Small Business Regulatory Enforcement Fairness Act; Unfunded Mandates Reform Act

No comments were received on the Department's initial determinations under this section that the proposed rule was neither a "significant regulatory action" within the meaning of section 3(f) of Executive Order 12866, nor a "major rule" under the Small Business Regulatory Enforcement Fairness Act of 1996, and that this rulemaking is not subject to the Unfunded Mandates Reform Act of 1995. Because of the interests expressed by some of the contracting agencies, the final rule is nonetheless being treated as a significant rule. However, the rule is not economically significant and does not require preparation of a full regulatory impact analysis. The rule is not expected to have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The modifications to regulatory language in this final rule limit coverage of off-site material and supply work from Davis-Bacon prevailing wage requirements as a result of appellate court rulings. In addition, the final rule makes only a limited amendment to the *site of the work* definition to address an issue not contemplated under the current regulatory language—those instances where significant portions of buildings or works may be constructed at secondary sites which are not in the vicinity of the project's final resting place. It is believed that such instances will be rare, and that any increased costs which may arise on such projects would be offset by the savings resulting from the other changes that limit coverage.

The Department also concludes that the rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). The Department continues to be of the view that the rule will not likely result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for

consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in excess of \$100 million in expenditures by state, local and tribal governments in the aggregate, or by the private sector. Furthermore, the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the rule does not include a Federal mandate. The term *Federal mandate* is defined to include either a Federal intergovernmental mandate or a Federal private sector mandate. 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do not include an enforceable duty which is a duty arising from participation in a voluntary program. 2 U.S.C. 658(7)(A). A decision by a contractor to bid on federal and federally assisted construction contracts is purely voluntary in nature, and the contractor's duty to meet Davis-Bacon Act requirements arises from participation in a voluntary federal program.

V. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have federalism implications. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

VI. Regulatory Flexibility Analysis

The Department has determined that this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule will primarily implement modifications resulting from court decisions interpreting statutory language, which would reduce the coverage of Davis-Bacon prevailing wage requirements as applied to construction contractors and subcontractors, both large and small, on DBRA covered contracts. In addition, the rule will make a limited amendment to the *site of the work* definition to address an issue not contemplated under the current regulatory language—those instances where significant

portions of buildings or works may be constructed at secondary sites which are not in the vicinity of the project's final resting place. The Department believes that such instances will be rare, and that any increased costs which may arise on such projects would be offset by the savings due to the other limitations on coverage provided by the rule. The Department of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Notwithstanding the above, the Department prepared and published a Regulatory Flexibility Analysis in the NPRM. After reviewing comments on the proposed rule, the Department has prepared the following final regulatory flexibility analysis regarding this rule:

(1) *The Need for and Objectives of the Rule*

The Department is promulgating this new rule to clarify the regulatory requirements concerning the Davis-Bacon Act's *site of the work* language in view of three appellate court decisions. These decisions concluded that the Department's application of its regulations to cover certain activities related to off-site facilities dedicated to the project was at odds with the Davis-Bacon Act language that limits coverage to workers employed "directly upon the site of the work." This amendment to the Department's regulations is therefore necessary to bring the Department's regulatory definitions of the statutory terms *construction*, *prosecution*, *completion*, and *repair* at 29 CFR 5.2(j), and *site of the work* at 29 CFR 5.2(l) into conformity with these court decisions.

The Department is also issuing this new rule in order to address situations that were not contemplated when the current regulations concerning *site of the work* were promulgated. The revised regulations make clear that the Davis-Bacon Act's scope of coverage includes work performed at locations established specifically for the purpose of constructing a significant portion of a building or work, as well as transportation of portions of the building or work to and from the project's final resting place. These regulatory changes are necessitated by the development of new construction technologies, whereby major segments of a project can be constructed at locations some distance from where the permanent structure(s) will remain after construction is completed.

(2) *Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis*

None of the commenters raised any issues specifically related to the Department's Initial Regulatory Flexibility Analysis. Some commenters expressed concerns that the Department's proposal to cover work performed at locations established specifically for the purpose of constructing a significant portion of a building or work, as well as transportation of portions of the building or work to and from the project's final resting place, would result in an expansion of Davis-Bacon coverage and an increase in costs. The Department has responded to these concerns by explaining that the number of projects affected by this change would be very limited and that the prevailing wage implications would not be substantial, especially with regard to the transportation activities attendant to these types of projects.

(3) *Number of Small Entities Covered Under the Rule*

Size standards for the construction industry are established by the Small Business Administration (SBA), and are expressed in millions of dollars of annual receipts for affected entities, *i.e.*, Major Group 15, Building Construction—General Contractors and Operative Builders, \$17 million; Major Group 16, Heavy Construction (non-building), \$17 million; and Major Group 17, Special Trade Contractors, \$7 million. The overwhelming majority of construction establishments would have annual receipts under these levels. According to the Census, 98.7 percent of these establishments have annual receipts under \$10 million. Therefore, for the purpose of this analysis, it is assumed that virtually all establishments potentially affected by this rule would meet the applicable criteria used by the SBA to define small businesses in the construction industry.

(4) *Reporting, Recordkeeping, and Other Compliance Requirements of the Rule*

There are no additional reporting or recording requirements for contractors under this rule. There may be rare instances where, pursuant to the new rule, contractors, including small entities, engaged in the construction of a significant portion of a Davis-Bacon project at a secondary site specifically established for such purpose, would be required to comply with Davis-Bacon wage and recordkeeping requirements with respect to certain laborers and

mechanics in circumstances not required under the current regulations.

(5) *Description of the Steps Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Objective of the Davis-Bacon and Related Acts*

As stated above, the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Furthermore, an alternative standard for small entities would not be feasible.

VII. Document Preparation

This document was prepared under the direction of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 5

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

For the reasons set out in the preamble, Title 29, Part 5, is amended as follows:

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

1. The authority citation for part 5 is revised to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in § 5.1(a) of this part.

2. Section 5.2 is amended by revising paragraphs (j) and (l) to read as follows:

§ 5.2 Definitions.

* * * * *

(j) The terms *construction*, *prosecution*, *completion*, or *repair* mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not “construction, prosecution, completion,

or repair” (see *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991)).

* * * * *

(l) The term *site of the work* is defined as follows:

(1) *The site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work*, *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, *and provided* they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;

(3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the *site of the work*. Such permanent, previously established facilities are not part of the *site of the work*, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

* * * * *

Signed in Washington, DC, on this 14th day of December, 2000.

T. Michael Kerr,
Administrator, Wage and Hour Division.

[FR Doc. 00–32436 Filed 12–19–00; 8:45 am]

BILLING CODE 4510–27–P

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 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 121-0140.)

(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 or wage rate (including the amount designated for fringe benefit where appropriate), HUD or its designee shall refer the question 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 121-0140.)

(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 an other 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 the 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). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(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 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 equivalent 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 or 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 of 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 provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirement 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 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees: No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed an complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under contract 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 only 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 he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for the 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

graph (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 sub paragraph (1) of this paragraph.

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

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

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceed \$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, 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 subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.