

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Lona Beach, CA 90802-4664

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CONTRACT  
**36454**

THIS CONTRACT is made and entered, as of August 10, 2022, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on July 19, 2022, by and between MIK CONSTRUCTION, INC., a California corporation, whose address is 8022 Westman Avenue, Whittier, California 90606 ("Contractor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, pursuant to a Notice Inviting Bids for Job Order Contract, City of Long Beach, California, bids were received, publicly opened on November 18, 2021 and declared on the date specified in said Notice; and

WHEREAS, the City Manager accepted the bid of Contractor; and

WHEREAS, the City Council authorized the City Manager to enter a contract with Contractor for the work described in the bid documents;

NOW, THEREFORE, in consideration of the mutual terms and conditions herein, the parties agree as follows:

1. SCOPE OF WORK. Contractor shall furnish all necessary labor, supervision, tools, materials, supplies, appliances, equipment and transportation for the work described in each Work Order, as defined in Specification No. R-7193 (hereinafter the "bid documents"), said work to be performed according to the Contract Documents identified below. However, this Contract is intended to provide to City complete and finished work and, to that end, Contractor shall do everything necessary to complete the work, whether or not specifically described in the Contract Documents.

2. CONTRACT PERFORMANCE. The Contractor must perform a minimum of fifteen percent (15%) of the contract work for a project, with no more than eighty-five (85%) of the work done by subcontractors. All subcontractors used by the primary contractor must be pre-approved by the City, and at a minimum be required to be licensed, hold liability insurance, and have sufficient relevant experience.

3. PRICE AND PAYMENT. City shall pay to Contractor the amount(s)

1 for each Work Order based on the adjustment factor in Contractor's Bid, attached hereto  
2 as Exhibit "A"; provided, however, that City shall not pay more than Two Million Dollars  
3 (\$2,000,000) for the term of the Contract. Furthermore, no individual Work Order project  
4 shall exceed Seven Hundred and Fifty Thousand Dollars (\$750,000).

5 4. CONTRACT DOCUMENTS. The Contract Documents include: The  
6 Notice Inviting Bids; Project Specifications No. R- 7193 (which may include by reference  
7 the Standard Specifications for Public Works Construction, 2015 edition, and any  
8 supplements thereto, collectively the "Standard Specifications"); the City of Long Beach  
9 Standard Plans; the California Code of Regulations; the various Uniform Codes applicable  
10 to trades; the prevailing wage rates; Instructions to Bidders; the Bid; the bid security; the  
11 City of Long Beach Disadvantaged, Minority and Women-Owned Business Enterprise  
12 Program; this Contract and all documents attached hereto or referenced herein including  
13 but not limited to insurance; JOC General Provisions; the Construction Task Catalog; JOC  
14 Contract Documents (which contain Technical Specifications); Bond for Faithful  
15 Performance; Payment Bond; Notice to Proceed; Notice of Completion; any addenda or  
16 change orders issued in accordance with the Standard Specifications; any permits required  
17 and issued for the work; and approved final design drawings and document; for a Work  
18 Order, if any, and the Information Sheet ("Contract Documents"). These Contract  
19 Documents are incorporated herein by the above reference and form a part of this Contract.

20 Notwithstanding section 2-5.2 of the Standard Specifications, if any  
21 conflict or inconsistency exists or develops among or between Contract Documents, the  
22 following priority shall govern: 1) this Contract (including any and all amendments hereto);  
23 2) permit(s) from other public agencies; 3) Change Orders; 4) Addenda (which shall include  
24 written clarifications, corrections and change to the bid documents and other types of  
25 written notices issued prior to bid opening); 5) JOC General Provisions; 6) Bid/Proposal;  
26 7) the Construction Task Catalog; 8) Technical Specifications; 9) other reference  
27 specifications; 10) other reference plans; 11) approved drawings, if any; 12) the City of  
28 Long Beach Standard Plans and 13) the Notice Inviting Bids.

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5. TIME FOR CONTRACT.

A. The term of this Contract shall begin on November 1, 2022 and shall end on October 31, 2023 or on City's payment of the not-to exceed dollar amount hereunder to Contractor as specified in section 3, whichever occurs first. The term may be extended for two (2) additional one-year periods, at the discretion of the City Manager.

B. Contractor shall commence work on a date to be specified in a written Notice to Proceed from City for each Work Order and shall complete all work within the number of working days identified in each Work Order, subject to events beyond the control of Contractor. Time is of the essence for performance of this Contract and each Work Order. City will suffer damage if the work in each Work Order is not completed within the time stated, but those damages would be difficult or impractical to determine. So, Contractor shall pay to City, as liquidated damages, the amount stated in the Contract Documents.

6. FORCE MAJEURE. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, pandemic, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of such cause for failure to perform.

7. ACCEPTANCE OF WORK NOT TO CONSTITUTE A WAIVER. The acceptance of any work or the payment of any money by City shall not operate as a waiver of any provision of any Contract Document, of any power reserved to City, or of any right to damages or indemnity hereunder. The waiver of any breach or any default hereunder shall not be deemed a waiver of any other or subsequent breach or default.

8. WORKERS' COMPENSATION CERTIFICATION. Concurrently

1 herewith, Contractor shall submit certification of Workers' Compensation coverage in  
2 accordance with California Labor Code Sections 1860 and 3700, a copy of which is  
3 attached hereto as Exhibit "B".

4 9. CLAIMS FOR EXTRA WORK. No claim shall be made at any time  
5 upon City by Contractor for and on account of any extra or additional work performed or  
6 materials furnished, unless such extra or additional work or materials shall have been  
7 expressly required by the City Manager and the quantities and price thereof shall have  
8 been first agreed upon, in writing, by the parties hereto.

9 10. CLAIMS. Contractor shall, upon completion of the work, deliver  
10 possession thereof to City ready for use and free and discharged from all claims for labor  
11 and materials in doing the work and shall assume and be responsible for, and shall protect,  
12 defend, indemnify and hold harmless City from and against any and all claims, demands,  
13 causes of action, liability, loss, costs or expenses for injuries to or death of persons, or  
14 damages to property, including property of City, which arises from or is connected with the  
15 performance of the work.

16 11. INSURANCE. Prior to commencement of work, and as a condition  
17 precedent to the effectiveness of this Contract, Contractor shall provide to City evidence of  
18 all insurance required in the Contract Documents.

19 In addition, Contractor shall complete and deliver to City the form  
20 ("Information Sheet") attached as Exhibit "C" and incorporated by reference, to comply with  
21 Labor Code Section 2810.

22 12. TERMINATION.

23 A. Termination for Convenience. The City may, whenever the  
24 interests of the City so require, terminate this Contract, in whole or in part, for the  
25 convenience of the City. The City will give written notice of the termination to the  
26 Contractor specifying all or that part of the Contract terminated and the date  
27 termination becomes effective.

28 i. The Contractor shall incur no further obligations in

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connection with the terminated Work and, on the date set in the notice of termination, the Contractor shall stop Work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated Work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated Work. The City may direct the Contractor to assign the subcontracts to the City. The Contractor must still complete the Work not terminated by the notice of termination and may incur obligations as are necessary to do so.

ii. The City may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the City:

(a) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and

(b) the completed or partially completed shop drawings and sketches, information, and other property that, if the Contract had been completed, would be required to be furnished to the City. The Contractor shall, upon direction of the City, protect and preserve property in the possession of the Contractor in which the City has an interest. If the City does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials for the benefit of the City.

iii. If the parties are unable to agree on the amount of a termination settlement, the City will pay the Contractor the following amounts: Contractor's right, title, and interest under the terminated orders or

(a) For Contract Work performed before the effective date of termination, the total, without duplication of any items, of: i. The percentage of the Contract price, which equals the percentage (%) of

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Work, completed in accordance with the schedule of values, if applicable, less prior progress payment(s), any applicable Liquidated Damages, and charge backs. The amount of outstanding Stop Notices shall be withheld until the Stop Notices are resolved as provided by law. ii. The cost of settling and paying terminated subcontracts that are properly chargeable to the terminated portion of the Work.

(b) The reasonable costs of settlement of the Work terminated, including: i. Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement bids and supporting data; ii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

B. Termination for Default.

i. If the Contractor refuses or fails (a) to develop Proposals properly and diligently in substantial accord and compliance with the Request for Proposal issued by the City; (b) to reach agreement with the City on the means, methods, and quantities to accomplish a specific Scope of Work, (c) to commence the Work within the time specified in the Work Duration Schedule; (d) to perform the Work or any separable part with the diligence that will ensure completion in accordance with the Work Duration Schedule, including any extensions/adjustments made thereto; (e) to provide sufficient and properly skilled workmen or proper materials or equipment to complete the Work in an acceptable manner and without delay, (e) to promptly. pay its Subcontractors, laborers, and material men; (f) to perform any of the Contractor's other obligations under the Contract Documents; or (g) to complete the Work within the time specified ("events of default"), the City may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work). In this event, the City may take

1 over the Work and complete it by contract or otherwise, and may take  
2 possession of and use any materials, appliances, and plant on the site  
3 necessary for completing the Work. The Contractor and Contractor's sureties  
4 shall be liable for any damage to the City resulting from events of the default,  
5 whether or not the Contractor's right to proceed with the Work is terminated.  
6 This liability includes any increased costs incurred by the City in completing  
7 the Work.

8 ii. The Contractor's right to proceed shall not be terminated  
9 because of delays, nor will the Contractor be charged with damages under  
10 this Article, if: a. the delay in completing the Work arises from unforeseeable  
11 causes beyond the control and without the fault or negligence of the  
12 Contractor (such as (i) acts of God, (ii) acts of the public enemy, (iii) acts of  
13 the City in either its public or contractual capacity, (iv) acts of another  
14 contractor in the performance of a contract with the City, (v) fires, (vi) floods,  
15 (vii) epidemics, (viii) quarantine restrictions, (ix) strikes, (x) freight  
16 embargoes, (xi) unusually severe weather, or (xii) delays of Subcontractors  
17 or suppliers at any tier arising from unforeseeable causes beyond the control  
18 and without the fault or negligence of both the Contractor and the  
19 subcontractors or suppliers (but failure or inability to pay shall not be an  
20 unforeseeable cause); and, b. the Contractor, within fourteen (14) calendar  
21 days after the beginning of any delay unless extended by the City, notifies  
22 the City in writing of the causes of the delay. The City will ascertain the facts  
23 and the extent of the delay. If, in the judgment of the City, the findings warrant  
24 such action, the time for completing the Work will be extended by written  
25 approval of the Capital Project Coordinator. The findings of the City will be  
26 final.

27 iii. If, after termination of the Contractor's right to proceed,  
28 it is determined that the Contractor was not in default, or that the delay was

1                   excusable, the rights and obligations of the parties will be the same as if the  
2                   termination had been issued for the convenience of the City.

3                   iv.       The rights and remedies of the City in this Article are in  
4                   addition to any other rights and remedies provided by law or under this  
5                   Contract. Time is of the essence for all delivery, performance, submittal, and  
6                   completion dates in this Contract.

7                   13.    WORK DAY. Contractor shall comply with Sections 1810 through  
8                   1815 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a  
9                   penalty to City, the sum of Twenty-Five Dollars (\$25.00) for each worker employed by  
10                  Contractor or any subcontractor for each calendar day such worker is required or permitted  
11                  to work more than eight (8) hours unless that worker receives compensation in accordance  
12                  with Section 1815.

13                  14.    PREVAILING WAGE RATES. Contractor is directed to pay the  
14                  general rate of per diem wages for each craft, classification, or type of worker needed to  
15                  execute the work orders associated with the contract (prevailing wage rates). Copies of the  
16                  applicable prevailing rate of per diem wages are on file at its principal office (Labor  
17                  Compliance Division, 411 W. Ocean Boulevard, 6th Floor, Long Beach, California, 90802),  
18                  and shall be made available to any interested party upon request. State prevailing wage  
19                  rates and federal Davis Bacon wage rates (as applicable) will be assigned on a job order  
20                  contract basis, based on the date a request for quote for work is received. Contractor is  
21                  required to post a copy of the determination of the director of the prevailing rate of per diem  
22                  wages at each job site. Pursuant to Section 1775, Contractor shall forfeit, as a penalty to  
23                  the City, up to Two Hundred Dollars (\$200) for each laborer, worker or mechanic employed  
24                  for each calendar day, or portion thereof, that such laborer, worker or mechanic is paid less  
25                  than the prevailing wage rates for any work done by Contractor, or any subcontractor,  
26                  under this Contract. The difference between the prevailing wage rates and the amount paid  
27                  to each worker for each calendar day or portion thereof for which each worker was paid  
28                  less than the prevailing wage rate shall be paid to each worker by the Contractor or

1 subcontractor.

2 15. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE.

3 Contractor is advised that this work constitutes a public work of improvement subject to  
4 California Labor Code Division 2, Part 7, Chapter 1, Articles 1-5, §§1720-1861. Pursuant  
5 to Labor Code Section 1771.1. Contractor or subcontractors shall not be qualified to bid  
6 on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public  
7 contract Code, or engage in the performance of any contract for public work, as defined in  
8 the California Labor Code, unless currently registered and qualified to perform public work  
9 pursuant to Section 1725.5. Contract (or associated subcontracts) shall not be entered into  
10 without proof of the Contractor's (or subcontractor's) current registration to perform public  
11 work pursuant to Section 1725.5. All work conducted in support of this public work of  
12 improvement is subject to compliance monitoring and enforcement by the Department of  
13 Industrial Relations.

14 16. APPRENTICESHIP EMPLOYMENT. The Contractor shall comply  
15 with Section 1777.5 of the Labor Code concerning the employment of apprentices by the  
16 Contractor or any subcontractor under the Contractor and, by submitting a Bid and  
17 executing the Contract, the Contractor stipulates that it shall so comply. Contractors  
18 employing apprentices or trainees under approved programs shall maintain written  
19 evidence of the registration of apprenticeship programs and certification of trainee  
20 programs, the registration of the apprentices and trainees, and the ratios and wage rates  
21 prescribed in the applicable programs. For federally assisted contracts, prospective  
22 bidders should refer to the Federal Davis Bacon Contract Provisions and Related Matters  
23 (29 CFR § 5.5) in Exhibit "E".

24 17. CERTIFIED PAYROLL RECORDS.

25 A. Pursuant to the provisions of Labor Code Section 1776,  
26 Contractor shall keep and shall cause each subcontractor performing any portion of  
27 the work under this Contract to keep an accurate payroll record, showing the name,  
28 address, social security number, work classification, straight time and overtime

1 hours worked each day and week, and the actual per diem wages paid to each  
2 journeyman, apprentice, worker, or other employee employed by Contractor or  
3 subcontractor in connection with the work. Such payroll records for Contractor and  
4 all subcontractors shall be certified and shall be available for inspection at all  
5 reasonable hours at the principal office of Contractor pursuant to the provisions of  
6 Section 1776 of the Labor Code. Contractor's failure to furnish such records to City  
7 or City's authorized Labor Compliance representative in the manner provided herein  
8 for notices shall entitle City to withhold the penalty prescribed by law from progress  
9 payments due to Contractor.

10 B. Contractor shall submit to the City certified payroll records for  
11 Contractor and all subcontractors performing any portion of the work under this  
12 Contract on a monthly basis. Certified payroll records for Contractor and all  
13 subcontractors shall be maintained during the course of the work and shall be kept  
14 by Contractor for at least three (3) years after completion of the work.

15 C. The foregoing is in addition to, and not in lieu of, any other  
16 requirements or obligations established and imposed by any department of the City  
17 with regard to submission and retention of certified payroll records for Contractor  
18 and subcontractors.

19 18. COORDINATION WITH GOVERNMENTAL REGULATIONS. If the  
20 work is terminated pursuant to an order of any Federal or State authority, Contractor shall  
21 accept as full and complete compensation under this Contract such amount of money as  
22 will equal the product of multiplying the Contract Price stated in the Work Order(s) so  
23 terminated by the percentage of work completed by Contractor as of the date of such  
24 termination, and for which Contractor has not been paid. If the work is so terminated, the  
25 City Engineer, after consultation with Contractor, shall determine the percentage of said  
26 work so completed and the determination of the City Engineer shall be final.

27 If Contractor is prevented, in any manner, from strict compliance with  
28 the Contract Documents due to any Federal or State law, rule, or regulation, in addition to

1 all other rights and remedies reserved to the parties City may suspend performance  
2 hereunder until the cause of disability is removed, extend the time for performance, make  
3 changes in the character of the work or materials, or terminate this Contract without liability  
4 to either party.

5 19. NOTICES.

6 A. Any notice required hereunder shall be in writing and personally  
7 delivered or deposited in the U.S. Postal Service, first class, postage prepaid, to  
8 Contractor at the address first stated herein, and to the City at 411 West Ocean  
9 Boulevard, Long Beach, California 90802, Attn: City Manager. Notice of change of  
10 address shall be given in the same manner as stated herein for other notices. Notice  
11 shall be deemed given on the date deposited in the mail or on the date personal  
12 delivery is made, whichever first occurs.

13 B. Except for stop notices and claims made under the Labor Code,  
14 City will notify Contractor when City receives any third party claims relating to this  
15 Contract in accordance with Section 9201 of the Public Contract Code.

16 20. BONDS REQUIRED. Contractor shall, simultaneously with the  
17 execution of this Contract, execute and deliver to City a good and sufficient corporate  
18 surety bonds, in the form attached in the Contract Documents and in the amount specified  
19 therein, conditioned upon the faithful performance of this Contract by Contractor, and a  
20 good and sufficient corporate surety bond, in the form attached in the Contract Documents  
21 and in the amount specified therein, conditioned upon the payment of all labor and material  
22 claims incurred in connection with the Contract.

23 21. COVENANT AGAINST ASSIGNMENT. Neither this Contract nor any  
24 of the moneys that may become due Contractor hereunder may be assigned by Contractor  
25 without the written consent of City first had and obtained, nor will City recognize any  
26 subcontractor as such, and all persons engaged in the work of construction will be  
27 considered as independent contractors or agents of the Contractor and will be held directly  
28 responsible to Contractor.

1           22.    RESPONSIBILITY OF CONTRACTOR. Contractor shall have the  
2 responsibility to ensure compliance with all applicable federal, state, and local laws,  
3 regulations, and polices for itself and all subcontractors. Notwithstanding anything to the  
4 contrary in the Standard Specifications, Contractor shall have the responsibility, care and  
5 custody of the work. If any loss or damage occurs to the work that is not covered by  
6 collectible commercial insurance, excluding loss or damage caused by earthquake or flood,  
7 or the negligence or willful misconduct of City, then Contractor shall immediately make the  
8 City whole for any such loss or pay for any damage. If Contractor fails or refuses to make  
9 the City whole or pay, then City may do so and the cost and expense of doing so shall be  
10 deducted from the amount due Contractor from City hereunder.

11           23.    CONTINUATION. Termination or expiration of this Contract shall not  
12 terminate the rights or liabilities of either party which rights or liabilities accrued or existed  
13 prior to termination or expiration of this Contract.

14           24.    TAXES AND TAX REPORTING.

15           A.    As required by federal and state law, City is obligated to and  
16 will report the payment of compensation to Contractor on Form 1099-Misc.  
17 Contractor shall be solely responsible for payment of all federal and state taxes  
18 resulting from payments under this Contract. Contractor shall submit Contractor's  
19 Employer Identification Number (EIN), or Contractor's Social Security Number if  
20 Contractor does not have an EIN, in writing to City's Accounts Payable, Department  
21 of Financial Management. Contractor acknowledges and agrees that City has no  
22 obligation to pay Contractor until Contractor provides one of these numbers.

23           B.    Contractor shall cooperate with City in all matters relating to  
24 taxation and the collection of taxes, particularly with respect to the self-accrual of  
25 use tax. Contractor shall cooperate as follows: (i) for all leases and purchases of  
26 materials, equipment, supplies, or other tangible personal property totaling over One  
27 Hundred Thousand Dollars (\$100,000.00) shipped from outside California, a  
28 qualified Contractor shall complete and submit to the appropriate governmental

1 entity the form in Appendix "A" attached hereto; and (ii) for construction contracts  
2 and subcontracts totaling Five Million Dollars (\$5,000,000.00) or more, Contractor  
3 shall obtain a sub-permit from the California Department of Tax and Fee  
4 Administration ("CFTA") for the Work site. "Qualified" means that the Contractor  
5 purchased at least Five Hundred Thousand Dollars (\$500,000.00) in tangible  
6 personal property that was subject to sales or use tax in the previous calendar year.

7 C. Contractor shall create and operate a buying company, as  
8 defined in CFTA Regulation 1699, subpart (i), in City if Contractor will purchase over  
9 Five Million Dollars (\$5,000,000.00) in tangible personal property subject to  
10 California sales and use tax.

11 D. In completing the form and obtaining the permit(s), Contractor  
12 shall use the address of the Work site as its business address and may use any  
13 address for its mailing address. Copies of the form and permit(s) shall also be  
14 delivered to the City Engineer. The form must be submitted and the permit(s)  
15 obtained as soon as Contractor receives a Notice to Proceed. Contractor shall not  
16 order any materials or equipment over One Hundred Thousand Dollars  
17 (\$100,000.00) from vendors outside California until the form is submitted and the  
18 permit(s) obtained and, if Contractor does so, it shall be a material breach of this  
19 Contract. In addition, Contractor shall make all purchases from the Long Beach  
20 sales office of its vendors if those vendors have a Long Beach office and all  
21 purchases made by Contractor under this Contract which are subject to use tax of  
22 Five Hundred Thousand Dollars (\$500,000.00) or more shall be allocated to the City  
23 of Long Beach. Contractor shall require the same cooperation with City, with  
24 regards to subsections B, C and D under this section (including forms and permits),  
25 from its subcontractors and any other subcontractors who work directly or indirectly  
26 under the overall authority of this Contract.

27 E. Contractor shall not be entitled to and by signing this Contract  
28 waives any claim or damages for delay against City if Contractor does not timely

1 submit these forms to the appropriate governmental entity. Contractor may request  
2 a waiver to subsections B, C, and/or D. Waiver requests must be submitted in writing  
3 and will be subject to City review and approval. Contractor may contact the Financial  
4 Management Department, Budget Management Bureau at (562) 570-6425 for  
5 assistance with the form..

6 25. ADVERTISING. Contractor shall not use the name of City, its officials  
7 or employees in any advertising or solicitation for business, nor as a reference, without the  
8 prior approval of the City Manager, City Engineer or designee.

9 26. AUDIT. City shall have the right at all reasonable times during  
10 performance of the work under this Contract and for a period of five (5) years after final  
11 completion of the work to examine, audit, inspect, review, extract information from, and  
12 copy all books, records, accounts and other documents relating to this Contract.

13 27. NO PECULIAR RISK. Contractor acknowledges and agrees that the  
14 work to be performed hereunder does not constitute a peculiar risk of bodily harm and that  
15 no special precautions are required to perform said work.

16 28. THIRD PARTY BENEFICIARY. This Contract is intended by the  
17 parties to benefit themselves only and is not in any way intended or designed to or entered  
18 for the purpose of creating any benefit or right of any kind for any person or entity that is  
19 not a party to this Contract.

20 29. SUBCONTRACTORS. Contractor agrees to and shall bind every  
21 subcontractor to the terms of this Contract; provided, however, that nothing herein shall  
22 create any obligation on the part of City to pay any subcontractor except in accordance  
23 with a court order in an action to foreclose a stop notice. Failure of Contractor to comply  
24 with this Section shall be deemed a material breach of this Contract. A list of  
25 subcontractor(s) submitted by Contractor in compliance with Public Contract Code  
26 Sections 4100 et seq. is attached hereto as Exhibit "D" and incorporated herein by this  
27 reference, for each Work Order.

28 30. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Lona Beach, CA 90802-4664

1 SECTION 3 AND DAVIS BACON. If the work to be performed under this Contract will be  
2 financed in whole or in part with funding by the U.S. Department of Housing and Urban  
3 Development ("HUD") or other federal assistance, then this federal-aid work is subject to  
4 the requirements of the Davis Bacon Act and any additional HUD Section 3 requirements  
5 as directed by 24 CFR 75. Contractor must comply with the Federal Wage Decision  
6 applicable at the time a request for quote for an individual job order contract is received,  
7 as well as all record keeping requirements of HUD Section 3 and the Davis Bacon Act  
8 when required. Contractor is advised that they are to apply the higher wage for each craft  
9 when comparing state versus federal rates assigned to this contract, and the more stringent  
10 apprenticeship ratios and requirements between state and federal apprenticeship  
11 standards. Contractor shall cooperate with the City and its representatives regarding  
12 compliance with HUD Section 3. See Exhibit "F", for additional information regarding HUD  
13 Section 3 requirements, including certain documents that are required to be submitted with  
14 the affected work order proposal only if this federal-aid work is subject to the requirements  
15 of HUD Section 3 requirements.

16 31. BUILD AMERICA, BUY AMERICA ACT. If the work to be performed  
17 under this Contract will be financed in whole or in part with federal funding, then this federal-  
18 aid work is subject to the requirements of the Build America, Buy America Act (section  
19 70914 of Public Law No. 117-58, §§ 70901-52), which prohibits the use of federal funds for  
20 infrastructure projects, unless all iron, steel, manufactured products, and construction  
21 materials used in the project are produced in the United States ("Buy America preference")  
22 including the iron, steel, manufactured products, and construction materials provided by  
23 the Contractor pursuant to this Contract. The Contractor hereby represents and warrants  
24 to and for the benefit of the City that (a) the Contractor has reviewed and understands the  
25 Buy America preference, (b) all of the iron, steel, and manufactured products, and  
26 construction materials used in the project will be and/or have been produced in the United  
27 States in a manner that complies with the Buy America preference, unless an waiver to the  
28 requirement is approved, and (c) the Contractor will provide any further verified information,

1 certification or assurance of compliance with this section, or information necessary to  
2 support a waiver to the Buy America preference, as may be requested by the City or any  
3 federal agency. Notwithstanding any other provision of this Contract, any failure to comply  
4 with this section by the Contractor shall permit the City to recover as damages against the  
5 Contractor any loss, expense or cost (including without limitation attorney's fees) incurred  
6 by the City resulting from such failure (including without limitation any impairment or loss  
7 of funding, whether in whole or in part from any federal agency). Neither this section (nor  
8 any provision of this Contract necessary to give this section force or effect) shall be  
9 amended or waived without the prior written consent of the City.

10           32. FEDERAL-AID PROVISIONS. If the work to be performed under this  
11 Contract will be financed in whole or in part with Federal funds, then all of the statutes,  
12 rules and regulations promulgated by the Federal Government and applicable to work  
13 financed in whole or in part with Federal funds will apply to such work. Such rules are  
14 attached hereto as Exhibit "E" and incorporated herein.

15           33. NO DUTY TO INSPECT. No language in this Contract shall create  
16 and City shall not have any duty to inspect, correct, warn of or investigate any condition  
17 arising from Contractor's work hereunder, or to insure compliance with laws, rules or  
18 regulations relating to said work. If City does inspect or investigate, the results thereof  
19 shall not be deemed compliance with or a waiver of any requirements of the Contract  
20 Documents.

21           34. GOVERNING LAW. This Contract shall be governed by and  
22 construed pursuant to the laws of the State of California (except those provisions of  
23 California law pertaining to conflicts of laws).

24           35. INTEGRATION. This Contract, including the Contract Documents  
25 identified in section 4 hereof, constitutes the entire understanding between the parties and  
26 supersedes all other agreements, oral or written, with respect to the subject matter herein.

27           36. NONDISCRIMINATION. In connection with performance of this  
28 Contract and subject to federal laws, rules and regulations, Contractor shall not

1 discriminate in employment or in the performance of this Contract on the basis of race,  
2 religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV  
3 status, handicap or disability. It is the policy of the City to encourage the participation of  
4 Disadvantaged, Minority and Women-Owned Business Enterprises, and the City  
5 encourages Contractor to use its best efforts to carry out this policy in the award of all  
6 subcontracts.

7           37. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
8 accordance with the provisions of the Ordinance, this Contract is subject to the applicable  
9 provisions of the Equal Benefits Ordinance ("EBO"), section 2.73 et seq. of the Long Beach  
10 Municipal Code, as amended from time to time.

11           A. During the performance of this Contract, the Contractor certifies  
12 and represents that the Contractor will comply with the EBO. The Contractor agrees  
13 to post the following statement in conspicuous places at its place of business  
14 available to employees and applicants for employment:

15           "During the performance of a Contract with the City of Long Beach, the  
16 Contractor will provide equal benefits to employees with spouses and its  
17 employees with domestic partners. Additional information about the City of  
18 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
19 Long Beach Business Services Division at 562-570-6200."

20           B. The failure of the Contractor to comply with the EBO will be  
21 deemed to be a material breach of the Contract by the City.

22           C. If the Contractor fails to comply with the EBO the City may  
23 cancel, terminate or suspend the Contract, in whole or in part, and monies due or to  
24 become due under the Contract may be retained by the City. The City may also  
25 pursue any and all other remedies at law or in equity for any breach.

26           D. Failure to comply with the EBO may be used as evidence  
27 against the Contractor in actions taken pursuant to the provisions of Long Beach  
28 Municipal Code 2.93 et seq., Contractor Responsibility.

1 E. If the City determines that the Contractor has set up or used its  
2 contracting entity for the purpose of evading the intent of the EBO, the City may  
3 terminate the Contract on behalf of the City. Violation of this provision may be used  
4 as evidence against the Contractor in actions taken pursuant to the provisions of  
5 Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

6 38. DEFAULT. Default shall include but not be limited to Contractor's  
7 failure to perform in accordance with the Specifications, failure to comply with any Contract  
8 Document, failure to pay any penalties, fines or charges assessed against Contractor by  
9 any public agency, failure to pay any charges or fees for services performed by the City,  
10 and if Contractor has substituted any security in lieu of retention, then default shall also  
11 include City's receipt of a stop notice. If default occurs and Contractor has substituted any  
12 security in lieu of retention, then in addition to City's other legal remedies, City shall have  
13 the right to draw on the security in accordance with Public Contract Code section 22300  
14 and without further notice to Contractor. If default occurs and Contractor has not  
15 substituted any security in lieu of retention, then City shall have all legal remedies available  
16 to it.

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OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

MIK CONSTRUCTION, INC., a California corporation

10-25, 2022

By   
Name Peter Moon  
Title Vice President

\_\_\_\_\_, 2022

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Contractor"

CITY OF LONG BEACH, a municipal corporation

11-1, 2022

By   
City Manager

EXECUTED PURSUANT  
TO SECTION 901 OF  
"City"  
THE CITY CHARTER.

This Contract is approved as to form on OCTOBER 27, 2022.

CHARLES PARKIN, City Attorney

By   
Deputy

Minutes of Boards of Directors Meeting  
Of  
MIK Construction Inc.

Director's meeting was held at 8022 Westman Avenue, Whittier, CA 90606 on the 31<sup>st</sup> of August 2022 at 9:00 AM of said day.

Present at this session of the meeting:

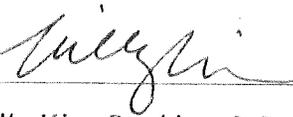
- Billy Kim, the President of said corporation.
- Peter Moon, the Vice President of said corporation.

On motion duly made and carried by affirmative vote of a majority of directors present at the meeting, the following resolutions were adopted:

Resolved, that only one signature is required, the President or Vice President, for signing of bidding documents and contracts to represent MIK Construction Inc.

There being no other business to come before the meeting, it was adjourned on motion and duly made and carried.

Dated:



---

Billy Kim, President & Secretary

## Exhibit A -Bid Documents

**DIVISION C – BID SECTION  
BID TO THE CITY OF LONG BEACH  
R-7193 Job Order Contracts 2022**

**INSTRUCTIONS TO BIDDERS  
READ CAREFULLY BEFORE MAKING OUT YOUR BID**

Submit only one bid. Contracts will be awarded to multiple firms. Failure to submit all documents contained in this Division C may invalidate your Bid. Do not make alterations of any kind in the bid form. Completely fill out ALL blank spaces. If not applicable, write N/A.

The undersigned offers to furnish all materials, labor and equipment required for the Job Order Contract for the City of Long Beach in accordance with the City's Invitation for Bids, including addenda thereto, if any, as follows:

- I. **Adjustment Factor.** The Contractor bids one Adjustment Factor, which will be applied against the prices set forth in the Construction Task Catalog (CTC). The Adjustment Factor will be used to price Work Orders by multiplying the Adjustment Factor by the unit prices and quantities for the specific Work Order. Pay attention to your decimal points. Write clearly and legibly.
  - A. The Bid shall be expressed as an adjustment "decrease from" (e.g. 0.9500) or "increase to" (e.g. 1.0500) the unit prices listed in the CTC, or exactly equal to the CTC unit prices (1.0000). Items 1 – 3 in the Award Formula shall be calculated out to five decimal places and then rounded to four decimal places. Rounding of numbers shall be accomplished by increasing the fourth decimal place if the fifth decimal is equal to five or greater. If the fifth decimal place is equal to four or less, the fourth decimal shall remain the same. Bids missing factors for any of the components in the Award Formula or bids containing components of the Award Formula that are not calculated and expressed out to four decimal places will be rejected as non-responsive.
  - B. Note that the **CTC unit prices do not include provisions for items such as the one percent Gordian Group license fee, overhead, profit, bond premiums, insurance, mobilization, proposal development, shop drawings and submittals and all contingencies** in connection therewith. Bidders shall therefore take this into account when bidding the Adjustment Factor. Once bid and, if awarded, the Contractor will be **strictly** held to the bid factor throughout the duration of the Contract.
  - C. Any change in the applicable minimum hourly rates of wages during the Contract period shall not affect the unit price to be paid by the City for work performed under the Contract.

**AWARD FORMULA**

|  |               |
|--|---------------|
| 1. Pricing Factor to be applied to the CTC                             | <u>0.8700</u> |
| 2. Factor for Overhead & Related Items Not Included in CTC Unit Prices | <u>0.0500</u> |
| 3. Profit Factor   | <u>0.1000</u> |
| 4. Contractor License Fee (imposed by Gordian per Work Order)          | <u>0.0100</u> |
| 5. Award Adjustment Factor (Sum of lines 1 through 4)                  | <u>1.0300</u> |

If project is Federally Funded, please initial if Contractor is willing to comply and complete funding requirements, including DBE, etc.

MIK

## Exhibit B -Workers' Compensation Certificate

**WORKERS' COMPENSATION CERTIFICATION**

In accordance with California Labor Code Sections 1860 and 3700, I certify that I am aware of the provisions of Section 3700 which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with said provisions before commencing the performance of the Work of this contract.

Contractor's Name:

MIK Construction Inc.

Signature of Contractor, or a corporate officer of Contractor, or a general partner of Contractor

  
\_\_\_\_\_

Title: President

Date: 3/2/2022

Exhibit C -Information to Comply  
with  
Labor Code Section 2810

## INFORMATION TO COMPLY WITH LABOR CODE SEC. 2810

To comply with Labor Code Sec. 2810, Contractor shall complete and submit this Information Sheet which shall be incorporated into and be a part of the Contract:

- 1) Workers' Compensation Insurance:
  - A. Policy Number: 1939225-21
  - B. Name of Insurer (**NOT** Broker): State Compensation Insurance Fund of California
  - C. Address of Insurer: 5880 Owens Drive, Pleasanton, CA 94588
  - D. Telephone Number of Insurer: 888-782-8338
- 2) For vehicles owned by Contractor and used in performing work under this Contract:
  - A. VIN (Vehicle Identification Number): N/A - Dependent on Scope of Work of Task Orders
  - B. Automobile Liability Insurance Policy Number: 08498044-9
  - C. Name of Insurer (**NOT** Broker): United Financial Casualty Company
  - D. Address of Insurer: 6300 Wilson Mills Road, Mayfield Village, OH 44143
  - E. Telephone Number of Insurer: 800-776-4737
- 3) Address of Property used to house workers on this Contract, if any: N/A
- 4) Estimated total number of workers to be employed on this Contract: To Be Determined
- 5) Estimated total wages to be paid those workers: To Be Determined
- 6) Dates (or schedule) when those wages will be paid: Weekly basis.
- (Describe schedule: For example, weekly or every other week or monthly)
- 7) Estimated total number of independent contractors to be used on this Contract: 10
- 8) Taxpayer's Identification Number: 26-2756081

## Exhibit D -List of Subcontractors

## LIST OF SUBCONTRACTORS

In accordance with the requirements provided in the "Subletting and Subcontracting Fair Practices Act" Division 2 Part 1, Chapter 4 of the California Public Contract Code, the Bidder shall set forth hereon the name, the location of the place of business, Department of Industrial Relations registration number, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater. The prime contractor shall set forth thereon the portion of the work (type and dollar value) that will be done by each subcontractor. The prime contractor shall list only one subcontractor for each portion as defined by the prime contractor in his or her bid. Information requested, other than the sub contractor's name, location of business, contractor license number and the portion of work that will be done by each subcontractor may be submitted by the prime contractor within 24 hours after the deadline for submission of bids.

|             |  |                             |    |
|-------------|--|-----------------------------|----|
| Name        |  | Type of Work                |    |
| Address     |  |                             |    |
| City        |  | Dollar Value of Subcontract | \$ |
| Phone No.   |  |                             |    |
| License No. |  | DIR Registration No.        |    |

|             |  |                             |    |
|-------------|--|-----------------------------|----|
| Name        |  | Type of Work                |    |
| Address     |  |                             |    |
| City        |  | Dollar Value of Subcontract | \$ |
| Phone No.   |  |                             |    |
| License No. |  | DIR Registration No.        |    |

|             |  |                             |    |
|-------------|--|-----------------------------|----|
| Name        |  | Type of Work                |    |
| Address     |  |                             |    |
| City        |  | Dollar Value of Subcontract | \$ |
| Phone No.   |  |                             |    |
| License No. |  | DIR Registration No.        |    |

|             |  |                             |    |
|-------------|--|-----------------------------|----|
| Name        |  | Type of Work                |    |
| Address     |  |                             |    |
| City        |  | Dollar Value of Subcontract | \$ |
| Phone No.   |  |                             |    |
| License No. |  | DIR Registration No.        |    |

|             |  |                             |    |
|-------------|--|-----------------------------|----|
| Name        |  | Type of Work                |    |
| Address     |  |                             |    |
| City        |  | Dollar Value of Subcontract | \$ |
| Phone No.   |  |                             |    |
| License No. |  | DIR Registration No.        |    |

# EXHIBIT “E”

## Federal Davis Bacon Contract Provisions and Related Matters(29 CFR § 5.5)

(a) **Davis Bacon Provisions.** (For any federally assisted contract in an amount in excess of \$2,000)

(1) **Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, 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 § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by

the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(2) ***Withholding.*** The City of Long Beach 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) ***Payrolls and basic records.***

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the

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

(ii)

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

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

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

(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 Regulations, 29 CFR part 3;

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

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

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

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

**(4) Apprentices and trainees -**

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

determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

(10) **Certification of eligibility.**

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

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

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

(b) **Contract Work Hours and Safety Standards Act.** (For any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act). As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

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

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

**A. 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.

**(1) MINIMUM WAGES**

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

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 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 (WH1321)) 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) Additional Classifications.**

- (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;
  - (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, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), 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 ("OMB") under OMB control number 1235-0023.)
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

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

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

(2) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from 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 U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**(3) Payrolls and basic records.**

- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

- (ii) **Certified Payroll Reports.**

(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and
- (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 3729 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 U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and Trainees.

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

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

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

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.
- (7) **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. 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) **Certification of Eligibility.**
- (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) 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) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).

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

## **B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds **\$100,000**. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

- (1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph B(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 B(1) of this paragraph, **in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2)** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.
- (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 U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any 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 B(2) of this paragraph.
- (4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(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 B(1) through (4) of this paragraph.

## **C. HEALTH AND SAFETY**

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds **\$100,000**.

- (1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her 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 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
- (3)** The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

# EXHIBIT “F”

**CITY OF LONG BEACH**  
DEPARTMENT OF FINANCIAL MANAGEMENT  
Business Services Bureau

**HUD SECTION 3 COMPLIANCE GUIDELINES**

**REVISED September, 2022**

## Policy

Notwithstanding anything contained in Federal law, the Contractor (throughout this Guideline, reference to “Contractor” shall mean prime contractor and shall include “Developer” as applicable) and its subcontractors shall comply with Section 3 requirements (24 CFR Part 75) and shall:

1. Make attempts to contract with Section 3 Business Concerns for all building trades and non-construction related work at the subject project site. *For non-construction related work, Section 3 worker may be included as long as the work performed does not require an advanced degree or professional licensing.*
2. To the greatest extent feasible, employ Section 3 workers for a minimum of twenty five percent (25%) of the total number of labor hours worked by all workers on a Section 3 Project, including Targeted Section 3 workers (5% or more of the total number of labor hours worked by all workers – 5% is included as part of the 25% threshold).

The City is committed to working with the Contractor to successfully achieve Section 3 requirements.

### Definitions

► **Section 3 Coordinator:** Representative(s) of the City available to assist the Contractor and any subcontractor(s) to meet the Section 3 goals described above.

► **Section 3 Business:** A business that meets at least one of the following criteria documented within the last six-month period:

- at least fifty-one percent (51%) or more owned and controlled by low-income persons;
- more than 75% of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or;
- at least 51% owned and controlled by current residents of public housing or Section 8 assisted housing.

► **Section 3 Worker:** A worker *who currently fits or when hired within the past five years fit* at least one of the following categories (Note the five year span does not take effect until Nov 30, 2025):

- Met HUD’s income limits in the previous calendar year (individual income does not exceed eighty percent (80%) of the area median income for the Los Angeles County-Long Beach Area. This is based on an individual’s income, not on household size)
- Is employed by a Section 3 Business Concern; or
- Is a YouthBuild participant

► **Targeted Section 3 Worker (sub-category of a Section 3 Worker):**

- **Projects funded by public housing assistance:**

- Workers employed by a Section 3 business concern, or;
- Workers who currently or when hired (within the last 5 years \*effective November 30, 2025) were residents of public or Section 8-assisted housing, or
- YouthBuild Participants

- **Projects funded by housing and community development assistance**

- Workers employed by a Section 3 business concern, or:
- Workers who are currently or when hired (within the last five years \*effective November 30, 2025) were living within the service area or neighborhood of the project, or:
- Youthbuild Participants

- **Service Area:**

- an area within one mile of the Section 3 Project, or within a circle that is sufficient to encompass a population of 5,000 people according to the most recent US Census.

► **YouthBuild Program:**

- programs receiving assistance under the Workforce Innovation and Opportunity ACT (29U.S.C.3226)

## Section 3 Business Enterprises – Compliance Requirements

Contractors/Vendors are directed to contract with Section 3 business concerns to the **greatest extent feasible**. Good Faith efforts to contract with Section 3 business concerns may include the following:

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

**Publishing Sources for HUD Section 3 Contracting Opportunities can be found on the City's website at the following web address: <http://longbeach.gov/finance/business-info/compliance/hud-section-3-program/>**

**Attachment B of the HUD Section 3 Contractor Attachments is provided to assist the Contractor with recording all contact and outreach efforts.** This is not required but is strongly recommended as proof of efforts to assist in demonstrating safe harbor.

## Required Documentation to accompany ALL bid/proposals

1. **An executed HUD Section 3 Affidavit (Attachment A).** This document is to be submitted with the Prime Contractor's bid. Must be completed by all subcontractors prior to issuance of Notice to Proceed.
2. **Business Concern Information Form (Attachment C-1 / C-2) for the Prime Contractor and all listed subcontractors/subconsultants** with the Prime's Bid. If not available with Bid Documents, each form must be received by the City within 72 hours (working days). The Section 3 Coordinator will use this form to determine if the prime and/or subcontractor qualifies as a Section 3 Business Concern. Form C-1 is to be submitted for construction contractors, C-2 is for professional service providers.

## Section 3 Workforce – Compliance Requirements

During construction, the Contractor shall do the following:

1. **The Contractor shall, to the greatest extent possible, employ Section 3 workers for a minimum of twenty five percent (25%) of the total number of labor hours worked by all workers on a Section 3 Project. Contractor shall also employ Section 3 Targeted Workers for a minimum of 5% of the total number of labor hours worked by all workers. The 5% is included as part of the 25% threshold.** If the Contractor fails to meet these work hour requirements, the Contractor shall be subject to penalties outlined in Effects of Noncompliance on page 8. To avoid imposition of such penalties, the Contractor must demonstrate that it utilized its best efforts to achieve the Section 3 work hour goals. The Contractor may demonstrate best efforts by detailing all efforts made on a contact log similar to **Attachment B** and affixing documents to the log that support such efforts (e.g., proof of mailing, fax transmittal sheets, e-mails, etc.).
2. The Contractor shall submit the following documentation to the City's Section 3 Coordinator at a date and time to be specified:
  - **An executed HUD Section 3 Affirmative Action Plan / Section 3 Clause (Attachment D).** This document is to be submitted prior to issuance of Notice to Proceed and becomes a part of the Contractor's contract with the City and required for each subcontractor. Must be completed by all tiers of contractors.
  - **A Project Section 3 - Worker Certification Form (Attachment E)** for each employee working onsite for the prime contractor and each listed subcontractor. The form shall include the employee's name, address and individual income limit. This form will be used to determine if the employee qualifies as a Section 3 Worker or Targeted Section 3 Worker.

3. Post public notices announcing **HUD Section 3 Job and Contracting/Business Opportunities**. The Contractor shall post these notices at the jobsite.
4. With each monthly application for payment, the Contractor shall provide to the City or their designee, by the fifteenth (15<sup>th</sup>) calendar day of the following month, documentation to confirm compliance with Section 3 Worker and Targeted Worker requirements. These documents shall include, but not be limited to:
  - a. Submittal of Certified Payrolls utilizing the City's LCPTracker software system. All workers employed on the Section 3 Project will be set-up in the Demographic Classification section based on the list of worker classifications and the information noted on the Section 3 Worker Certification form (**Attachment E**).
  - b. Submit Monthly Worker Utilization forms to the City and its designee (**Attachment F**)
5. Submit other such documentation that the City may require to demonstrate the Contractor's/subcontractor's compliance with Section 3 requirements, such as contact logs for Section 3 inquiries.

During construction of the project, the Contractor shall demonstrate compliance with Section 3 worker and targeted worker hours to the greatest extent feasible. The following are methods that can be documented to demonstrate greatest extent feasible:

- Consulting with State and local agencies (such as Pacific Gateway Workforce Innovation Network) administering training programs, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 and Targeted Section 3 Workers for a contractor's or subcontractor's training and employment positions.
- Advertising the jobs to be filled through the local media.
- Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a Section 3 Business Concern) that will undertake efforts to match eligible and qualified Section 3 and Targeted Section 3 Workers with the training and employment positions that the contractor intends to fill.
- Establishing training programs, which are consistent with the requirements of the Department of Labor, for Section 3 and Targeted Section 3 Workers in the building trades.
- Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to housing developments where Section 3 or Targeted Section 3 persons reside.
- Entering into "first source" hiring agreements with organizations representing Section 3 and Targeted Section 3 Workers.

- Entering into "first source" hiring agreements with organizations representing Section 3 and Targeted Section 3 Workers.
- Contacting resident council, resident management corporations, or other resident organizations, where they exist, in the housing developments where Section 3 and Targeted Section 3 persons reside, to request the assistance of those organizations in notifying residents of the training and employment positions to be filled.
- Sponsoring a job informational meeting to be conducted at a location in the housing developments where Section 3 and Targeted Section 3 persons reside or in the neighborhood or service area of the Section 3 covered project.
- Arranging assistance in conducting job interviews and completing job applications for residents of the housing developments where Section 3 and Targeted Section 3 persons reside and in the neighborhood or service area in which a Section 3 project is located.
- Arranging for a location in the housing developments where Section 3 and Targeted Section 3 persons reside, or the neighborhood or service area of the project, where job applications may be delivered and collected or where job interviews can be conducted.
- Where there are more qualified Section 3 and Targeted Section 3 Workers than there are positions to be filled, maintaining a file of eligible qualified Section 3 and Targeted Section 3 Workers for future employment positions.
- Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 and Targeted Section 3 Workers previously hired by for employment opportunities.

### **Providing Other Economic Opportunities**

Contractors and subcontractors are encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with Section 3 covered assistance.

Other Training and Employment Related Opportunities: These include, but need not be limited to, use of trainee positions to fill vacancies; and hiring Section 3 and/or Target Section 3 Workers in part-time positions.

Other Business-Related Economic Opportunities: Such opportunities include, but are not limited to, the formation of Section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, and purchase of materials and supplies from Public Housing Authority resident-owned businesses.

## HUD Section 3 – Effects of Noncompliance

The City is committed to working with the Contractor to meet the employment and contracting requirements. **In this regard, the Contractor shall include the Section 3 Coordinator in all meetings related to complying with the employment goals.** Failure to meet these goals or to assist in the documentation of the Contractor's best efforts to meet these goals, shall result in a penalty equal to ten percent (10%) of each subsequent progress payment application beyond any normal retention until the deficiency is corrected. Upon remediation of the deficiency, the penalty amount will be released to the Contractor. In the event that the Contractor fails to provide required documentation regarding both the twenty five percent (25%) Section 3 Worker employment and five percent (5%) targeted Section 3 worker, the maximum penalty that may be assessed is ten percent (10%) of each subsequent progress pay application.

**Note:** In the event a subcontractor fails to furnish the required documentation to the Contractor, the Contractor at its discretion shall withhold a penalty equal to ten percent (10%) of each payment application from that subcontractor. Upon remediation of the deficiency, the Contractor shall release the penalty amount to the subcontractor. The maximum penalty that may be assessed against a subcontractor is ten percent (10%) of each subsequent pay application.

## HUD Section 3 Contract/Business Opportunity and Workforce Development Compliance Personnel List

|                | <b>Contracting/ Business</b>                                      | <b>Employment Opportunities</b>  |
|----------------|---|--|
| <b>Contact</b> | Business Outreach Coordinator                                     | Eric Galeana<br>Pacific Gateway Coordinator                              |
| <b>Phone</b>   | (562) 570-6200  | (562) 570-3738   |
| <b>Address</b> | City Hall<br>411 W. Ocean Blvd, 6th floor<br>Long Beach, CA 90802 | Pacific Gateway Network<br>4811 Airport Plaza Dr<br>Long Beach, CA 90815 |
| <b>Email</b>   | lbpurchasing@longbeach.gov  | Eric.Galeana@pacific-gateway.org   |
| <b>Fax</b>     | (562) 570-5099  | (562) 570-3704   |



**CITY OF LONG BEACH  
HUD SECTION 3 COMPLIANCE  
ATTACHMENTS  
TABLE OF CONTENTS**

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HUD INCOME LIMITS

---

AFFIDAVIT INDICATING RECEIPT OF THE CITY'S  
SECTION 3 COMPLIANCE GUIDELINES                      HUD ATTACHMENT A                      SUBMIT WITH BID\*

---

SECTION 3 BUSINESS CONCERN OUTREACH LOG                      HUD ATTACHMENT B                      SUBMIT WITH BID

---

SECTION 3 BUSINESS CONCERN CERTIFICATION                      HUD ATTACHMENTS C-1&C-2                      SUBMIT WITH BID\*

---

SECTION 3 CLAUSE                      HUD ATTACHMENT D                      SUBMIT UPON AWARD

---

SECTION 3 WORKER CERTIFICATION                      HUD ATTACHMENT E                      SUBMIT UPON AWARD

---

SECTION 3 MONTHLY UTILIZATION REPORT                      HUD ATTACHMENT F                      SUBMIT MONTHLY

---

EXAMPLE EFFORTS TO PROVIDE TRAINING/EMPLOYMENT OPPORTUNITIES

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**DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT (HUD) INCOME LIMITS**

Listed below is the current income limit that the City of Long Beach and its representatives will use to determine whether an individual meets the Federal definition of a “Section 3” worker.

**The income amount is subject to adjustment by the City in accordance with HUD guidelines. Please note that as of the November 30, 2020 HUD “Final Rule”, Section 3 workers are now defined based on *individual* income, and NOT on income based on family size.**

| <b>FAMILY<br/>SIZE</b> | <b>INCOME CRITERIA<br/>(80% OF MEDIAN)</b> |
|------------------------|--|
| 1                      | \$66,750                                   |

FY22 EFFECTIVE 4/01/22



# CITY OF LONG BEACH HUD SECTION 3 AFFIDAVIT

Must be completed by the prime contractor and submitted with bid documents. Must be completed and submitted by all subcontractors prior to issuance of Notice to Proceed.



**IMPORTANT NOTE:** YOUR SIGNATURE BELOW INDICATES THAT YOU RECEIVED A COPY OF THE CITY'S SECTION 3 GUIDELINES AND COMPLIANCE REQUIREMENTS STATED THEREIN.

\_\_\_\_\_  
OFFICER OR AUTHORIZED  
AGENT OF COMPANY  
(PRINT NAME)

\_\_\_\_\_  
SIGNATURE'S TITLE

\_\_\_\_\_  
SIGNATURE

**PROJECT NAME:** \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_  
City STATE ZIP CODE

**TELEPHONE NUMBER:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_





# THE CITY OF LONG BEACH HUD SECTION 3 BUSINESS Concern Certification

**Must be submitted within 72 hours of bid opening for Prime Contractor and subcontractors (Form C-1) and Professional Service Providers (Form C-2) listed on the bid . This form will be utilized to qualify Section 3 Business Concerns.**

The sole purpose of this form is to calculate the number of Section 3 Business Concerns working on construction projects. Please print or type.

PROJECT:

COMPANY  
NAME:

ADDRESS:

CITY:

STATE:

ZIP CODE:

TELEPHONE: (     )

FORM COMPLETED BY:

SERVICE OR PRODUCT:

IS 51% OR MORE OF YOUR BUSINESS OWNED  
BY SECTION 3 PERSONS OR CURRENT  
RESIDENTS OF PUBLIC HOUSING OR  
SECTION 8 ASSISTED HOUSING ?

YES  NO

WERE AT LEAST 75% OF THE LABOR HOURS  
OVER THE PREVIOUS 3-MONTH PERIOD  
PERFORMED BY SECTION 3 WORKERS?

YES  NO

SIGNATURE

DATE



# THE CITY OF LONG BEACH PROFESSIONAL SERVICES Section 3 Certification FORM

(Optional for all Professional Services Employees performing on Section 3 Projects)

## ATTACHMENT C-2 (Professional Services)

Worker's Name: \_\_\_\_\_

Worker's Permanent Address: \_\_\_\_\_

*Please note your individual annual income, racial and ethnicity background:*

**INDIVIDUAL INCOME:**

- \$66,250 or less
- \$66,251 or more

**RACIAL BACKGROUND:** Mark an "X" below, to all that apply that best describes your origin:

- American Indian/Alaska Native
- Asian
- Black/African American
- Native Hawaiian/Other Pacific Islander
- White

**ETHNIC BACKGROUND:** Mark an "X" below, next to the category that best describes your ethnicity:

- Hispanic/Latino
- Not Hispanic/Latino

**THE UNDERSIGNED DECLARES THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT.**

\_\_\_\_\_

*Signature of Worker* *Date*

| <b>To Be Completed by Employer</b>   |  |
|--|--|
| The above-named person <input type="checkbox"/> is a permanent full-time employee or <input type="checkbox"/> was hired on _____ |  |
| This person's Job Classification is _____  |  |
| Name of Employer: _____  |  |

| <b>To Be Completed by City of Long Beach Contracting Agency</b> |  |
|---|--|
| Preference Category:  | <input type="checkbox"/> Targeted Service Area <input type="checkbox"/> Youthbuild <input type="checkbox"/> McKinney Homeless <input type="checkbox"/> Other |
| Census Tract Number:  | _____  |

Purpose: To ensure that, to the greatest extent feasible, projects financed through the City of Long Beach Community Development Block Grant (CDBG) program or HUD Public Housing Authority funding provide business and employment opportunities for Section 3 businesses and workers in the City of Long Beach

In all contract for this work in connection with a CDBG project, the following clause (referred to as the "Section 3 Clause"), shall be included

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3) as amended in the section 3 Final Rule on September 29, 2020. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment and training, generated by HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low income persons, particularly persons who are recipients of HUD assistance for housing or are residents of the project area/community in which the federal assistance is spent. Consistent with 24 CFR Part 75, the City of Long Beach shall refrain from entering into a contract with any contractor after notification is received from HUD that the contractor has been found in violation of the Section 3 regulations. The City will also review past performance of contractors on Section 3 projects in determining contract awards.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall provide the name and location of the person(s) taking applications for employment.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- F. The contractor understands that non-compliance and willful violation of HUD's regulations in 24 CFR Part 75 with respect to Section 3 and related regulations by itself, its sub-contractors and or lower tier contractors will result in corrective measures taken by the City of Long Beach to achieve compliance, including suspension or withholding of contractor payments.
- G. With respect to work to be performed in connection with Section 3-covered public or Indian housing assistance, the housing authority and its contractor will agree to specific actions that will constitute the contractor's best efforts to offer job training and employment opportunities to low-income persons and/or contracting opportunities to Section 3 business concerns, as applicable. These "best effort" activities shall be described on the attachment to this contract and made a part of this contract.





# THE CITY OF LONG BEACH

## SECTION 3 WORKER CERTIFICATION FORM

To be Completed by ALL workers  
EMPLOYED ON-SITE  
(BASED ON INCOME GUIDELINES AT TIME OF BID)

Worker's Name: \_\_\_\_\_

Worker's Permanent Address: \_\_\_\_\_

*Please note your individual annual income, racial and ethnicity background:*

**INDIVIDUAL INCOME:**

- \$66,750 or less
- \$66,751 or more

**RACIAL BACKGROUND:** Mark an "X" below, to all that apply that best describes your origin:

- American Indian/Alaska Native
- Asian
- Black/African American
- Native Hawaiian/Other Pacific Islander
- White

**ETHNIC BACKGROUND:** Mark an "X" below, next to the category that best describes your ethnicity:

- Hispanic/Latino
- Not Hispanic/Latino

**THE UNDERSIGNED DECLARES THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT.**

\_\_\_\_\_  
*Signature of Worker* \_\_\_\_\_  
*Date*

|  |
|--|
| <b>To Be Completed by Employer</b>   |
| The above-named person <input type="checkbox"/> is a permanent full-time employee or <input type="checkbox"/> was hired on _____ |
| This person's Job Classification is _____  |
| Name of Employer: _____  |

|   |
|---|
| <b>To Be Completed by City of Long Beach</b>  |
| Preference Category: <input type="checkbox"/> Targeted Service Area <input type="checkbox"/> Youthbuild <input type="checkbox"/> McKinney Homeless <input type="checkbox"/> Other |
| Census Tract Number: _____  |

**MONTHLY  
SECTION 3 REPORT**

**Instructions for Completion**

Project Name and Number: \_\_\_\_\_

***Prime Contractor Report Must Include Total Labor Hours for all Sect. 3 Qualified Employees and Report Cumulative Fiscal Year (July - June) to Date Information***

**Part I : Employment and Training Opportunities**

- Column A:** Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.
- Column B:** Enter the number of total labor hours for each category of workers identified in **Column A** in connection with this project. "Total Labor Hours Worked" are all hours worked by employees, or employees of contractors, funded by covered funds (public housing operating or capital).
- Column C:** Enter the number of Section 3 Labor Hours Worked for each category of workers identified in **Column A** in connection with this project. "Section 3 Labor Hours Worked" are the subset of the total hours worked by a Section 3 Worker (generally low or very low-income at time of hire).
- Column D:** Enter the number of Targeted Section 3 Labor Hours Worked for each category of workers identified in **Column A** in connection with this project. "Targeted Section 3 Labor Hours Worked" are the subset of **Column C** that are hours worked by recipients of housing assistance, and other criteria.
- Column E:** Please mark a selection for **Column E** based on HUD Labor Hour Benchmark Goals

**EMPLOYMENT & TRAINING OPPORTUNITIES**  
**Prime Contractor Report Must Include Total Hours for All Subcontractors**

Project Name and Number: \_\_\_\_\_

|   |                   |                            |
|---|-------------------|----------------------------|
| Contractor Name & Address: (Street, Housing Authority, State, Zip): | License Number:   | Dollar Amount of Contract: |
|   | Contact Person:   | Phone: (Include Area Code) |
|   | Reporting Period: | Date Report Submitted:     |

**Part I: Employment and Training (\*\* Include Labor Hours in columns B, C, & D.)**

| A<br>Job Category            | B<br>Total Number<br>of<br>Labor Hours | C<br>Number of Labor Hours<br>worked by Section 3<br>Worker(s) | D<br>Number of<br>Labor Hours Worked by<br>Targeted Section 3<br>Worker(s) | E**<br>Did the reporting agency meet the<br>Safe Harbor Benchmark Goal?<br><br>(Y/N) |
|------------------------------|--|--|--|--|
| Professionals                |  |  |  |  |
| Technicians                  |  |  |  |  |
| Office/Clerical              |  |  |  |  |
| Construction by Trade (List) |  |  |  |  |
| Trade:                       |  |  |  |  |
| Other (List)                 |  |  |  |  |
|                              |  |  |  |  |
|                              |  |  |  |  |
|                              |  |  |  |  |
|                              |  |  |  |  |
| <b>Total</b>                 |  |  |  | <b>Yes / No</b>  |

**Part II: Summary - Cumulative to Date Reporting Required**

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- \_\_\_\_\_ Attempted to recruit low-income residents through: contacting Housing Authority Resident Initiatives, local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or non-metropolitan county) in which this Section 3 covered project is located, or similar methods.
- \_\_\_\_\_ Participated in a HUD program or other program which promotes the training or employment of Section 3 Residents.
- \_\_\_\_\_ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 Business Concerns.
- \_\_\_\_\_ Other; describe below or on additional attached pages if required.

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

**Efforts to Offer Training and Employment Opportunities to Section 3 and Targeted Section 3 Workers (residents) That Demonstrate Compliance with the "Greatest Extent Feasible" Requirement of Section 3.**

- Consulting with State and local agencies administering training programs funded through WIA, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 and Targeted Section 3 Workers for a contractor's or subcontractor's training and employment positions.
- Advertising the jobs to be filled through the local media.
- Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a Section 3 Business Concern) that will undertake efforts to match eligible and qualified Section 3 and Targeted Section 3 Workers with the training and employment positions that the contractor intends to fill.
- Establishing training programs, which are consistent with the requirements of the Department of Labor, for Section 3 and Targeted Section 3 Workers in the building trades.
- Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to housing developments where category 1 or category 2 persons reside.
- Entering into "first source" hiring agreements with organizations representing Section 3 and Targeted Section 3 Workers.
- Contacting resident council, resident management corporations, or other resident organizations, where they exist, in the housing developments where category 1 or category 2 persons reside, to request the assistance of those organizations in notifying residents of the training and employment positions to be filled.
- Sponsoring a job informational meeting to be conducted at a location in the housing developments where category 1 or category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.
- Arranging assistance in conducting job interviews and completing job applications for residents of the housing developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a Section 3 project is located.
- Arranging for a location in the housing developments where category 1 or category 2 persons reside, or the neighborhood or service area of the project, where job applications may be delivered and collected or where job interviews can be conducted.
- Where there are more qualified Section 3 and Targeted Section 3 Workers than there are positions to be filled, maintaining a file of eligible qualified Section 3 and Targeted Section 3 Workers for future employment positions.
- Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 and Targeted Section 3 Workers previously hired by for employment opportunities.

**Efforts to Award Contracts to Section 3 Business Concerns That Demonstrate Compliance with the "Greatest Extent Feasible" Requirement of Section 3.**

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

**Providing Other Economic Opportunities**

Contractors and subcontractors are encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with Section 3 covered assistance.

**Other Training and Employment Related Opportunities:** These include, but need not be limited to, use of trainee positions to fill vacancies; and hiring Section 3 and/or Target Section 3 Workers in part-time positions.

**Other Business-Related Economic Opportunities:** Such opportunities include, but are not limited to, the formation of Section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from Housing Authority resident-owned businesses, and purchase of materials and supplies from Public Housing Authority resident-owned businesses.

## Appendix A – Tax Direct Payment Permit

**APPLICATION FOR  
USE TAX DIRECT PAYMENT PERMIT**

Please type or print clearly. Read instructions on reverse before completing this form.

**SECTION I – BUSINESS INFORMATION**

|   |   |
|---|---|
| NAME OF BUSINESS OR GOVERNMENTAL ENTITY                                       | SALES/USE TAX PERMIT NUMBER   |
| BUSINESS ADDRESS (street)   | CONSUMER USE TAX ACCOUNT NUMBER   |
| CITY, STATE, & ZIP CODE   | If applicant is applying for either a sales/use tax permit or a consumer use tax account in addition to a use tax direct payment permit check here <input type="checkbox"/> |
| MAILING ADDRESS (street address or po box if different from business address) |   |
| CITY, STATE, & ZIP CODE   | NAME UNDER WHICH BUSINESS IS TO BE TRANSACTED IF DIFFERENT THAN ABOVE   |

**SECTION II – MULTIPLE BUSINESS LOCATIONS**

LIST BELOW THE BUSINESS AND MAILING ADDRESSES OF ALL LOCATIONS WHERE PROPERTY PURCHASED UNDER A USE TAX DIRECT PAYMENT CERTIFICATE WILL BE USED. IF ADDITIONAL SPACE IS NEEDED, ATTACH A SEPARATE SHEET

|                     |                     |
|---------------------|---------------------|
| 1. BUSINESS ADDRESS | 4. BUSINESS ADDRESS |
| MAILING ADDRESS     | MAILING ADDRESS     |
| 2. BUSINESS ADDRESS | 5. BUSINESS ADDRESS |
| MAILING ADDRESS     | MAILING ADDRESS     |
| 3. BUSINESS ADDRESS | 6. BUSINESS ADDRESS |
| MAILING ADDRESS     | MAILING ADDRESS     |

**SECTION III – CERTIFICATION STATEMENT**

I hereby certify that I qualify for a Use Tax Direct Payment Permit for the following reason: (Please check one of the following)

- I have purchased or leased for my own use tangible personal property subject to use tax at a cost of five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding this application for the permit. I have attached a "Statement of Cash Flows" or other comparable financial statements acceptable to the Board for the calendar year immediately preceding the date of application and a separate statement attesting that the qualifying purchases were purchases that were subject to use tax.
- I am a county, city, city and county, or redevelopment agency.

I also agree to self-assess and pay directly to the Board of Equalization any use tax liability incurred pursuant to my use of a Use Tax Direct Payment Permit.

The above statements are hereby certified to be correct to the knowledge and belief of the undersigned, who is duly authorized to sign this application.

|                         |       |
|-------------------------|-------|
| SIGNATURE               | TITLE |
| NAME (typed or printed) | DATE  |

(See reverse side for general information and filing instructions)

## USE TAX DIRECT PAYMENT PERMIT (General Information and Filing Instructions)

Revenue and Taxation Code section 7051.3 authorizes the State Board of Equalization to issue a *Use Tax Direct Payment Permit* to qualified applicants. This permit allows purchasers and lessees of tangible personal property (other than lessees of motor vehicles the lease of which is subject to the terms of section 7205.1 of the Sales and Use Tax Law) to self-assess and pay use taxes directly to the Board instead of to the vendor or lessor from whom the property is purchased or leased.

Permit holders will be provided with a *Use Tax Direct Payment Exemption Certificate* which they can issue to retailers and lessors when they purchase tangible personal property subject to use tax or make qualified leases of tangible personal property. Vendors who timely take the certificate in good faith from a permit holder are relieved of the duty to collect use taxes on the sales for which the certificate was issued. Permit holders who acquire property under a certificate must self-assess and report the use taxes directly to the Board on their tax returns, and allocate the local taxes to the county, city, city and county, or redevelopment agency in which the property is first used. Permit holders who fail to properly pay any use taxes that are due on property for which a certificate was given are subject to interest and penalties assessments in addition to their tax liability.

To qualify for a *Use Tax Direct Payment Permit*, an applicant must meet the following conditions:

- (1) The applicant must agree to self-assess and pay directly to the Board any use tax which is due on property for which a use tax direct payment exemption certificate was given; and
- (2) The applicant must certify to the Board either of the following:
  - (A) The applicant has purchased or leased for its own use tangible personal property subject to use tax which cost five hundred thousand dollars (\$500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit; or
  - (B) The applicant is a county, city, city and county, or redevelopment agency.

Persons wishing to obtain a use tax direct payment permit must be pre-qualified and either hold a California seller's permit or a consumer use tax account.

Persons other than governmental entities who currently hold either a California seller's permit or a consumer use tax account must complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under conditions of Part (2)(A) above, and submit a "Statement of Cash Flows" or other comparable financial statements acceptable to the board for the calendar year immediately preceding the date of application which discloses total purchases of property and equipment for own use and a separate statement under company letterhead certifying that five hundred thousand dollars (\$500,000) or more of such purchases were subject to use tax.

Persons other than governmental entities who are not required to hold a seller's permit and who do not currently hold a consumer use tax account must obtain a consumer use tax account and then complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(A) above and submit a "Statement of Cash Flows" or other comparable financial statements acceptable to the board for the calendar year immediately preceding the date of application which discloses total purchases of property and equipment for own use and a separate statement under company letterhead certifying that five hundred thousand dollars (\$500,000) or more of such purchases were subject to use tax.

Governmental entities who currently hold either a California seller's permit or a consumer use tax account must complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(B) above, and submit an additional statement to that effect under official letterhead and signed by an authorized governmental representative.

Governmental entities who do not hold a California seller's permit or a consumer use tax account must obtain a consumer use tax account and then complete the application for a *Use Tax Direct Payment Permit*, sign the certification statement attesting that they qualify for a permit under the conditions of Part (2)(B) above, and submit an additional statement to that effect under official letterhead and signed by an authorized governmental representative.

The completed *Application for Use Tax Direct Payment Permit*, certification statement, and qualifying documentation should be returned to the address shown below. Upon determination that the applicant qualifies, a *Use Tax Direct Payment Permit* and a *Use Tax Direct Payment Exemption Certificate* will be mailed to the applicant.

If you would like additional information regarding the *Use Tax Direct Payment Permit* or need assistance in completing this application, you can call 916-445-5167, or write to the Board of Equalization, Compliance Policy Unit, P.O. Box 942879, Sacramento, CA 94279-0040.

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## Company Profile

[Reset  
Company Profile  
Search](#)

## Company Complaints

[Company Performance  
& Comparison Data](#)

[Enforcement Actions](#)

[Consumer Complaint  
Study](#)

## Workers' Compensation

[Workers' Compensation  
Complaint & Requests  
for Action/Appeals  
Contact Information](#)

## Additional Information

[View  
Financial Disclaimer](#)

[Company Profile Search](#)

[Lines of Insurance Search](#)

[Other Insurance Entities](#)

## Company Profile

**WESTERN SURETY COMPANY**

101 S Reid St, Sioux Falls, SD 57103-7030

[Show All](#)
[Name History](#)
[Agent for Service](#)
[Reference Information](#)
[Lines of Business](#)
[Financial Sta](#)

## Name History

| Legal Name             | Name Status | Effective Date |
|------------------------|-------------|----------------|
| WESTERN SURETY COMPANY | Current     |                |

## Agent for Service

| Full Name     | Effective From Date | Attn Or Co             | Full Address                                 | Contact Phone |
|---------------|---------------------|------------------------|--|---------------|
| AMANDA GARCIA | 06/21/2021          | C T Corporation System | 330 N Brand Blvd Ste 700, Glendale, CA 91203 | 213-337-4615  |

## Reference Information

### Identification

|                 |             |
|-----------------|-------------|
| CA #            | 0761-7      |
| NAIC            | 13188       |
| NAIC Group      | 218         |
| NAIC Group Name | CNA INS GRP |

### Classification

|                  |                     |
|------------------|---------------------|
| Category         | Insurer             |
| Category Type    | Property & Casualty |
| Status           | Unlimited-Normal    |
| License Category | Admitted            |

## Location

|            |              |
|------------|--------------|
| State Name | South Dakota |
| Origin     | Foreign      |
| Country    | -            |
| Form       | Stock        |

## Lines of Business

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the glossary.

### Lines of Business

Surety

Liability

## Financial Statements

\* Year

### California Department of Insurance Disclaimer

The Annual and Quarterly Financial Statements are submitted to the California Department of Insurance ("CDI") pursuant to California Insurance Code Sections 900 and 931 and California Code of Regulations Section 2308.1. The information is furnished to the CDI by California admitted insurers and is provided to the public "AS IS" pursuant to California Insurance Code Section 12921.2.

The CDI does not guarantee the truth, accuracy, adequacy or completeness of the data contained in the insurers' Annual and Quarterly Financial Statements and expressly disclaims any liability for any errors, omissions, or the result obtained from the use of such data.

Individuals who are unable to access the Annual and Quarterly Financial Statements may contact the CDI at [CustodianofRecords@insurance.ca.gov](mailto:CustodianofRecords@insurance.ca.gov) for additional information.

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Copyright © California Department of Insurance

Duplicate Original  
**PAYMENT BOND**  
(Labor and Material Bond)

Payment Bond  
No. 30172996

WHEREAS, The CITY OF LONG BEACH, a municipal corporation, hereinafter the "City" or "Obligee," have conditionally awarded to **MIK CONSTRUCTION, INC., a California corporation** designated as the "Contractor" or "Principal" herein, a contract for the work ("Work") described as follows: **various infrastructure repairs and improvements throughout the City of Long Beach to be performed under the method of Job Order Contracting**, as described in Specification No.: R-7193, Addenda/Addendum and related drawings.

WHEREAS, the Principal is about to enter into a Contract with the Obligee for the performance of the Work, which Contract and all Contract Documents set forth therein are incorporated herein by this reference.

WHEREAS, by the terms of said Contract Documents, as well as Civil Code Sections 9550 and 9554, Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor, materials or services used or reasonably required for use in the performance of the Work of the Project;

NOW THEREFORE, we the undersigned Contractor, as Principal, and Western Surety Company admitted as a surety insurer in the State of California ("Surety"), are held and firmly bound to the City for payment of the penal sum of **Seven Hundred Fifty Thousand Dollars (\$750,000)** lawful money of the United States, for which payment we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, shall fail to pay any of the persons named in Civil Code Section 9100 ("Claimants"), for all labor, materials or services used or reasonably required for use in performance of the Work of the Project, or for any amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such Claimant on the Project, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, that the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void.

If suit is brought upon this bond, the said Surety will pay reasonable attorney's fees to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or the assigns in any suit brought upon this bond.

The Surety and Principal, for value received, hereby stipulate and agree that no change, extension of time, modification, alteration or addition to the terms of the Contract or Contract Documents or to the Work to be performed thereunder shall in any way affect or release the Principal or Surety or their respective heirs, executors, administrators, successors and assigns from their obligations on this bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or Contract Documents, or to the Work. No premature payment by the City to the Principal shall release or exonerate the Surety, unless the Officer or Board of the City ordering the payment shall have actual notice at the time the order is made that the payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event more than the amount of such premature payment.

**CALIFORNIA ACKNOWLEDGMENT**

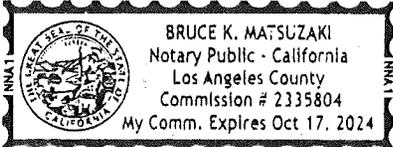
**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Los Angeles }

On October 13, 2022 before me, Bruce K Matsuzaki, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Peter Moon  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Performance Bond

Document Date: \_\_\_\_\_ Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

|  |  |
|--|--|
| Signer's Name: _____   | Signer's Name: _____   |
| <input type="checkbox"/> Corporate Officer – Title(s): _____   | <input type="checkbox"/> Corporate Officer – Title(s): _____   |
| <input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        | <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        |
| <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    | <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    |
| <input type="checkbox"/> Other: _____  | <input type="checkbox"/> Other: _____  |
| Signer is Representing: _____  | Signer is Representing: _____  |

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Richard Adair, William Syrkin, Sergio D Bechara, Rebecca Haas-Bates, Individually**

of Irvine, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of September, 2022.



WESTERN SURETY COMPANY

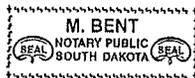
*Paul T. Bruflat*

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 19th day of September, 2022, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
March 2, 2026



*M. Bent*

M. Bent, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 5th day of October, 2022.



WESTERN SURETY COMPANY

*L. Nelson*

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

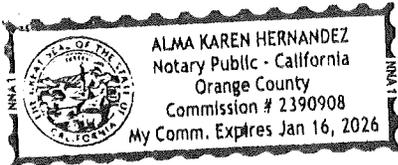
On 10/11/2022 before me, Alma Karen Hernandez, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Rebecca Haas-Bates  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Performance Bond No. 30172996 Document Date: 10/05/2022  
Number of Pages: Two(2) Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Rebecca Haas-Bates  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_  
Western Surety Company

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

The Surety and Principal, for value received, hereby stipulate and agree that no change, extension of time, modification, alteration or addition to the terms of the Contract or Contract Documents or to the Work to be performed thereunder shall in any way affect or release the Principal or Surety or their respective heirs, executors, administrators, successors and assigns from their obligations on this bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or Contract Documents, or to the Work. No premature payment by the City to the Principal shall release or exonerate the Surety, unless the Officer or Board of the City ordering the payment shall have actual notice at the time the order is made that the payment is in fact premature, and then only to the extent that such payment shall result in actual loss to the Surety, but in no event more than the amount of such premature payment.

FURTHER, Principal and Surety agree that if Obligee is required to engage the services of attorneys in connection with enforcement of the bond, each shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above penal sum.

The guarantees contained herein shall survive the final completion of the Work called for in the Contract Documents with respect to the obligations and liabilities of the Principal which survive such final completion.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above-named, on the 5th day of October, 2022.

Western Surety Company  
Surety Name  
By: Rebecca Haas-Bates  
Signature  
Name: Rebecca Haas-Bates  
Printed Name  
Title: Attorney-in-Fact  
1000 Wilshire Blvd., Suite 1800, 18th Floor  
Address: Los Angeles, CA 90017  
Telephone: (213) 452-5961  
  
\_\_\_\_\_  
Attorney-in-Fact  
  
\_\_\_\_\_  
Signature

MIK Construction, Inc., a California corporation  
By: [Signature]  
Signature  
Name: PETER MOON  
Printed Name  
Title: VICE PRESIDENT  
See attached CA Certificate  
By: \_\_\_\_\_  
Signature  
Name: \_\_\_\_\_  
Printed Name  
Title: \_\_\_\_\_

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

10/27, 2022

December 9, 2022

Approved as to form.

Approved as to sufficiency.

CHARLES PARKIN, City Attorney  
By: [Signature]  
Deputy City Attorney

CITY OF LONG BEACH, a municipal corporation  
By: [Signature]  
City Manager/City Engineer

NOTE:

1. Execution of this bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and Notary's certificate of each acknowledgment must be attached.
2. A corporation must execute this bond by duly authorized officers or agents, and a certified copy of a resolution of its Board of Directors authorizing such execution, or other evidence of authority for such execution, must be attached if executed by persons other than the officers listed in Section 313, California Corporations Code.

EXECUTED PURSUANT TO SECTION 310 OF THE CITY CHARTER.

Duplicate Original

Performance Bond  
No. 30172996

**PERFORMANCE BOND**  
**(Bond for Faithful Performance)**

WHEREAS, The CITY OF LONG BEACH, a municipal corporation of the State of California, hereinafter the "City" or "Obligee," have conditionally awarded to MIK CONSTRUCTION, INC., a California corporation designated as the "Contractor" or "Principal" herein, a contract for the work ("Work") described as follows: various infrastructure repairs and improvements throughout the City of Long Beach to be performed under the method of Job Order Contracting, as described in Specification No.: R-7193, Addenda/Addendum and related drawings.

WHEREAS, the Principal is about to enter into a Contract with Obligee for performance of the Work, which Contract, and all Contract Documents set forth therein are incorporated herein by this reference.

WHEREAS, the Principal is required to furnish a bond guaranteeing the prompt, full and faithful performance of its obligations under the Contract Documents concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, we the undersigned Contractor, as Principal, and Western Surety Company, an admitted surety insurer in the State of California, as Surety, are held and firmly bound unto THE CITY OF LONG BEACH, a municipal corporation of the State of California (hereinafter the "City" or "Obligee") in the penal sum of Seven Hundred Fifty Thousand Dollars (\$750,000) lawful money of the United States, for the payment of which sum, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as said Contract Documents may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, stop notices, costs, and fees of every description, whether imposed by law or equity, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, as they may be amended and supplemented including, but not limited to, its liability for liquidated damages for delay, all warranties or guarantees required thereunder and indemnity obligations; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

Whenever the Principal shall be, and is declared by the Obligee to be in default under the Contract, which shall include without limitation, any breach or default of the Contract Documents, then, after written notice from the Obligee to the Surety, as provided for below, the Surety shall either remedy the default or breach by the Principal or shall promptly and faithfully take charge of the Work of and complete the Work in accordance with the requirements of the Contract Documents with a contractor other than the Principal at its own expense and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract price including other costs and damages for which the surety may be liable hereunder; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee.

Within fifteen (15) days of Obligee's written notice to the Surety of the failure of performance of the Contract by the Principal, it shall be the duty of the Surety to give to the Obligee an unequivocal notice in writing of the Surety's election to remedy the default(s) of the Principal promptly, or to arrange for performance of the Contract promptly by a Contractor other than the Principal, time being of essence to this Bond. In said Notice of Election, the Surety shall state the date of commencement of its cure or remedy of the Principal's default(s) or its performance of the Contract. The Surety's obligations for cure or remedy, include but are not limited to: correction of defective work and completion of the Contract, additional legal, design professional and delay costs arising from Surety's actions or failure to act; and liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance by the Principal. The Surety shall give prompt written notice to the Obligee upon completion of the cure or remedy of the Principal's default(s) of its performance of the Construction Contract.

If the Surety does issue its Notice of Election and does not proceed to cure or remedy the Principal's default(s) of its performance of the Work with reasonable promptness, the Surety shall be deemed to be in default on this bond fifteen (15) days after receipt of a written notice from Obligee to the Surety demanding that the Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to Obligee.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above-named, on the 5th day of October, 2022.

Western Surety Company

MIK Construction, Inc., a California corporation

Surety Name  
By: Rebecca Haas-Bates  
Signature

By: [Signature]  
Signature

Name: Rebecca Haas-Bates  
Printed Name

Name: PETER MOON  
Printed Name

Title: Attorney-in-Fact  
1000 Wilshire Blvd., Suite 1800, 18th Floor

Title: VICE PRESIDENT

Address: Los Angeles, CA 90017

By: see attached CA certificate  
Signature

Telephone: (213) 452-5961

Name: \_\_\_\_\_  
Printed Name

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

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

\_\_\_\_\_  
Signature

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

10/27, 20\_\_

11-1, 2022

Approved as to form.

Approved as to sufficiency.

CHARLES PARKIN, City Attorney

CITY OF LONG BEACH, a municipal corporation

By: [Signature]  
Deputy City Attorney

By: [Signature]  
City Manager/City Engineer

NOTE:

1. Execution of this bond must be acknowledged by both PRINCIPAL and SURETY before a Notary Public and Notary's certificate of each acknowledgment must be attached.

2. A corporation must execute this bond by duly authorized officers or agents, and a certified copy of a resolution of its Board of Directors authorizing such execution, or other evidence of authority for such execution, must be attached if executed by persons other than the officers listed in Section 313, California Corporations Code.

EXECUTED FOR  
TO SECTION 307 OF  
THE PUBLIC  
CHAPTER

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

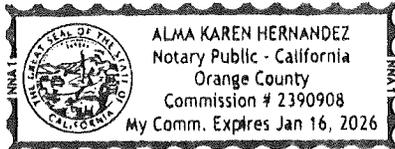
On 10/11/2022 before me, Alma Karen Hernandez, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Rebecca Haas-Bates  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Payment Bond No. 30172996 Document Date: 10/05/2022  
Number of Pages: Two(2) Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Rebecca Haas-Bates  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: Western Surety Company

Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

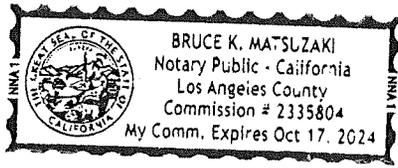
State of California }  
County of Los Angeles

On October 13, 2022 before me, Bruce K Matsuzaki, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Peter Moon  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Bruce K Matsuzaki  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Payment Bond

Document Date: \_\_\_\_\_ Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

|  |  |
|--|--|
| Signer's Name: _____   | Signer's Name: _____   |
| <input type="checkbox"/> Corporate Officer – Title(s): _____   | <input type="checkbox"/> Corporate Officer – Title(s): _____   |
| <input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        | <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        |
| <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    | <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    |
| <input type="checkbox"/> Other: _____  | <input type="checkbox"/> Other: _____  |
| Signer is Representing: _____  | Signer is Representing: _____  |

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Richard Adair, William Syrkin, Sergio D Bechara, Rebecca Haas-Bates, Individually**

of Irvine, CA, its true and lawful Attorney(s)-in-fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of September, 2022.



WESTERN SURETY COMPANY

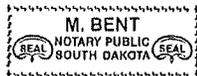
*Paul T. Bruffat*

Paul T. Bruffat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 19th day of September, 2022, before me personally came Paul T. Bruffat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
March 2, 2026



*M. Bent*

M. Bent, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 5th day of October, 2022.



WESTERN SURETY COMPANY

*L. Nelson*

L. Nelson, Assistant Secretary