Contract #: _____

# CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made and entered into this _____ day of _____, 20_____, between the SACRAMENTO EMPLOYMENT AND TRAINING AGENCY, a joint powers agency, hereinafter referred to as “SETA,” and _____ hereinafter referred to as “Contractor.”

## WITNESSETH:

**WHEREAS**, SETA heretofore caused specifications for the work hereinafter mentioned to be prepared; and

**WHEREAS**, SETA obtained quotes for the performance of said work in compliance with federal regulations; and

**WHEREAS**, the Contractor submitted to SETA a quote for the performance of said work as specified in said specifications which SETA desires to accept.

**NOW, THEREFORE**, in consideration of the promises herein, it is mutually agreed between the parties hereto as follows:

1. **CONTRACT DOCUMENTS**.

The following documents are by this reference incorporated in and made a part of this Agreement: Exhibit A - Standard Construction Contract Conditions attached hereto, including Exhibit A-1 - Davis-Bacon Act Attachment; Exhibit B - Scope of Work; Exhibit C - Contractor’s Bid; and Exhibit D - Notice to Commence. This Agreement, together with all exhibits, are collectively referred to herein as the “Plans and Specifications,” and by such reference are incorporated herein and made a part of this Agreement.

2. **SCOPE OF WORK**.

The Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship as provided for and set forth in the Plans and Specifications.

All of the work done under this Agreement shall be performed to the satisfaction of SETA which shall have the right to reject any and all materials and supplies furnished by the Contractor which do not comply with the Plans and Specifications, together with the right to require the Contractor to replace any and all work furnished by the Contractor which shall not either in workmanship or material be in strict accordance with the Plans and Specifications.

3. **COMPLETION**.

The work shall be completed and ready for acceptance no later than the completion date set forth in a written notice, delivered to Contractor by first class mail, postage prepaid, to commence work, which notice shall be substantially in the form attached hereto as Exhibit D (“Notice to Commence”). The commencement date set forth in the Notice to Commence shall be not less than seven (7) days after the date of the Notice and the completion date shall be not less than sixty (60) days after the commencement date. Contractor acknowledges and agrees that failure to complete the work by the completion date set forth in the Notice to Commence will result in Contractor's liability for the payment of liquidated

damages of $100 per day as described in Paragraph 16 of the Standard Construction Contract Conditions.

4. **PAYMENT**.

Attached hereto as Exhibit “C” is the quote of Contractor. Said quote contains the full and complete schedule of the different items with the lump sums or unit prices specified.

SETA agrees, in consideration of the work to be performed and subject to the terms and conditions hereof, to pay Contractor all sums of money which may become due to Contractor in accordance with the terms of the aforesaid bid and this Agreement, as follows:

(a) Upon completion and acceptance of the work, SETA will pay Contractor in the normal course of SETA's business, ninety percent (90%) of the quote amount, as adjusted by any mutually agreed upon change orders.

(b) Thirty-five (35) days after recordation of the Notice of Completion of the work, SETA will pay Contractor the remaining ten percent (10%) of the quote amount, as adjusted by any mutually agreed upon change orders, provided that no stop notice has been filed.

(c) In the event a stop notice is filed, SETA shall withhold from any funds due Contractor an amount sufficient to cover the amount claimed in the stop notice until the dispute involving the stop notice is finally resolved.

No payment made under this Agreement shall be construed to be an acceptance of defective work or improper materials.

5. **INSURANCE**.

The Contractor shall carry and maintain during the life of this Agreement, such public liability, property damage and contractual liability, automobile and Workers' Compensation Insurance as required by the Standard Construction Contract Conditions attached hereto as Exhibit A.

6. **WORKERS' COMPENSATION CERTIFICATION**.

By execution of this Agreement, the Contractor certifies that Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and that Contractor will comply with such provisions before commencing the performance of the work of this contract.

7. **INDEMNIFICATION**.

The Contractor shall defend, indemnify, and save harmless SETA (including its governing board members, officers, agents, employees, affiliates, and representatives) as set forth in the Standard Construction Contract Conditions.

8. **COUNTERPART, FACSIMILE AND ELECTRONIC SIGNATURES**

This CONSTRUCTION AGREEMENT may be signed in counterparts, such that signatures appear on separate signature pages. A copy or original of this CONSTRUCTION

AGREEMENT with all signatures and Exhibits appended together shall be deemed a fully executed Construction Agreement. Faxed signatures or signatures provided in electronic, portable document format (pdf) are binding and may be treated as original signatures for all purposes. All executed counterparts together shall constitute one and the same document, and any signature pages, including facsimile or electronic copies thereof, may be assembled to form a single original document.

9. **MISCELLANEOUS PROVISIONS**.

(a) This Agreement shall bind and inure to the benefit of the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of SETA in the same manner as if such parties had been expressly named herein.

(b) As used in this instrument the singular includes the plural, and the masculine includes the feminine and the neuter.

(c) This Agreement may create a possessory interest subject to property taxation, and Contractor may be subject to the payment of property taxes levied on such interest.

**IN WITNESS WHEREOF**, SETA and Contractor have caused this Agreement to be executed as of the day and year first above written.

**SACRAMENTO EMPLOYMENT AND TRAINING AGENCY**, a Joint Powers Agency

Dated:__________, 20______

BY: ________________________________
(Signature of Authorized Officer)

Kathy Kossick, Executive Director___
(Name and Title of Authorized Officer)

925 Del Paso Boulevard___________
(Address)

Sacramento, CA 95815-3608_______
(City, State, Zip Code)

**CONTRACTOR:**

________________________________
(Legal Name of Contractor)

Dated:__________, 20______

BY: ________________________________
(Signature of Authorized Officer)

________________________________
(Name and Title of Authorized Officer)

________________________________
(Address)

________________________________
(City, State, Zip Code)

# EXHIBIT A: STANDARD CONSTRUCTION CONTRACT CONDITIONS

## I. **INSURANCE**.

A. **Insurance**. The Contractor shall procure, maintain, and keep in force at all times during the term of the contract, at its sole expense, the following insurance:

1. General Liability. General Liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and products and completed operations liability. The limits of liability shall be not less than:

| | |
|---|---|
| Each Occurrence | One Million Dollars ($1,000,000) |
| Products and Completed Operations | One Million Dollars ($1,000,000) |
| Personal Injury | One Million Dollars ($1,000,000) |

If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the "each occurrence" limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.

If a products and completed operations aggregate limit of liability is used, the minimum products and completed operations aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.

2. Automobile Liability. Automobile Liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned motor vehicles. The limits of liability per accident shall not be less than:

| | |
|---|---|
| Combined Single Limit | One Million Dollars ($1,000,000) |

If General Liability coverage, as required above, is provided by the Commercial General Liability form, the Automobile Liability policy shall include an endorsement providing automobile contractual liability.

3. Workers' Compensation. Workers' Compensation insurance, with coverage as required by the State of California (unless the contractor is a qualified self-insurer with the State of California) and Employer's Liability Coverage.

B. **Other Insurance Provisions**.

1. The Contractor's General Liability, Automobile Liability, any Excess and Umbrella Liability, shall contain the following provisions:

a) SETA, its Board of Governors, officers, employees, agents, and volunteers shall be covered as additional insureds as respects any liability arising out of the activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied, or used by the Contractor, or motor vehicles owned, leased, hired, or borrowed by the Contractor. The policy shall contain no special limitations on the scope of coverage afforded to SETA, its Board of Governors, officers, employees, agents, or volunteers.

b) For any claims related to the project, the Contractor's insurance coverage shall be primary insurance as respects SETA, its Board of Governors, officers, employees, agents, or volunteers. Any insurance or self-insurance maintained by SETA, its Board of Governors, officers, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

c) Any failure to comply with the reporting or other provisions of the policies on the part of the Contractor, including breaches of warranties, shall not affect coverage provided to SETA, its Board of Governors, officers, employees, agents, or volunteers.

2. The Contractor's, Worker's Compensation, and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against SETA, its Board of Governors, officers, employees, agents, and volunteers.

3. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days prior written notice by certified mail has been given to SETA. Ten (10) days prior written notice by certified mail shall be given to SETA in the event of cancellation due to nonpayment of premium.

4. All of the Contractor's insurance coverages required hereunder shall be placed with insurance companies with a current A.M. Best rating of at least A:VII.

5. The Contractor shall furnish SETA with certificates of insurance, endorsements, or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, and copies of all endorsements specifically required hereunder. The Contractor shall furnish complete, certified copies of all required insurance policies including endorsements specifically required hereunder, when requested by SETA.

6. The Contractor shall report by telephone to SETA within 24-hours and also report in writing to SETA within fifteen (15) days after the Contractor or any subcontractors or agents have knowledge of any accident or

occurrence involving death of, or serious injury to, any person or persons, or damage in excess of Ten Thousand Dollars ($10,000) to property of SETA or others, arising out of any work done by or on behalf of the Contractor as part of the contract. Such report shall contain: (a) the date and time of the occurrence; (b) the names and addresses of all persons involved; and (c) a description of the accident or occurrence and the nature and extent of injury or damage.

7. SETA, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving thirty (30) days' written notice to the Contractor.

8. If the Contractor fails to procure or maintain insurance as required, or fails to furnish SETA with proof of such insurance, SETA, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by SETA shall be deducted and retained from any sums due the Contractor under the contract. Failure of SETA to obtain such insurance shall in no way relieve the Contractor from any of its responsibilities under this Agreement.

9. The making of progress payments, if any, to the Contractor shall not be construed as relieving the Contractor or its subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by SETA.

10. The failure of SETA to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.

## II. **INDEMNIFICATION**.

A. Contractor's Performance. Contractor shall defend, indemnify and save harmless SETA (including its Board of Governors, officers, agents, employees, affiliates and representatives) and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, losses or liability, in law or in equity, of every kind and nature whatsoever ("claims") arising out of or in connection with Contractor's operations to be performed under this Agreement including but not limited to:

1. Personal injury (including, but not limited to, bodily injury, emotional injury or distress, sickness or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, SETA, or any subcontractor or damage to property of anyone including the work itself (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

2. Penalties threatened, sought or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Contractor.

3. Alleged infringement of any patent rights which may be brought against SETA arising out of Contractor's work.

4. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to SETA from such claims or liens.

5. Contractor's failure to fulfill any of the covenants set forth in this Agreement.

6. Failure of Contractor to comply with the provisions of the Agreement relating to insurance.

7. Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees.

The indemnification requirements herein set forth, including those enumerated above, shall extend to claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active or passive negligent act or omission of SETA, or its agents, representatives or employees which may have contributed to the said injury or damage. Contractor, however, shall not be obligated under this Agreement to indemnify SETA for claims arising from the sole negligence or willful misconduct of SETA, or its agents, representatives or employees.

B. Contractor shall:

1. At Contractor's own cost, expense and risk, defend all claims as defined in Section A, above, that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Contractor, against SETA or its Board of Governors, agents, representatives or employees or any of them;

2. Pay and satisfy any judgment or decree that may be rendered against SETA or its Board of Governors, agents, representatives or employees, or any of them, arising out of any such claim;

C. No Limitation of Liability for Indemnification. The indemnities set forth in this section shall not be limited by the insurance requirements set forth in the Agreement.

III. **PERMITS AND LICENSES**. Building, plumbing, heating, electrical and similar permits which the Contractor is required to obtain from the County or City Building Inspection Divisions will be obtained by the Contractor. The Contractor shall procure all permits and licenses necessary for the normal conduct of its business and contractor operations.

IV. **SCOPE AND INTENT OF CONTRACT**.

1. Intent of Plans and Specifications. It is the intent of these Plans and Specifications and the contract drawings that the work performed under the Agreement shall result in a complete operating system in satisfactory working condition with respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but fairly implied. The prices paid for the various items shall include full compensation for furnishing all labor, materials, tools, equipment, overhead, profit, and doing all work necessary to complete the finished product as provided in the Plans and Specifications.

The Plans and Specifications and the contract drawings are intended to be explanatory of each other. Any work shown on the contract drawings and not in the Plans and Specifications, or vice versa, is to be executed as if indicated in both.

2. Clarification of Agreement Documents. Should it appear that the work to be done, or any of the matters relative thereto, are not sufficiently detailed or explained on the contract drawings or in the Plans and Specifications, or in the event of any doubt or question arising respecting the true meaning of the Plans and Specifications, the Contractor shall apply to SETA for such further explanations as may be necessary.

3. Conformance with Codes and Standards. All work and materials shall be in full accordance with the latest adopted standards and regulations of the State Fire Marshal; the Uniform Building Code; Title 24 of the California Administrative Code; the National Electrical Code; the Uniform Plumbing Code published by the Eastern Plumbing Officials Association; and other applicable codes, laws or regulations.

4. Effect of Extension of Time. The granting of an extension of time for the completion of the work on account of delays which in the judgment of SETA are unavoidable delays, or granted for the execution of extra additional work, shall in no way operate as a waiver on the part of SETA of any of its other rights under this Agreement.

5. Subcontracting and Assignment. The performance of the contract may not be subcontracted or assigned except with the prior written consent of SETA.

6. Contractor Not an Agent of SETA. The right of general supervision shall not make the Contractor an agent of SETA; and the liability of the Contractor for all damages to persons or to public or private property, arising from the execution of the work, shall not be lessened because of such general supervision.

7. Guarantee. Should any failure of the work or portion thereof occur within a period of one (1) year after acceptance of the project, which can be attributed to faulty materials, poor workmanship, or defective equipment, the Contractor shall promptly make the needed repairs at the Contractor's expense.

8. Materials and Tests. All materials shall be new and of quality equal to that specified. Whenever the quality or kind of material or article is not particularly specified, the materials or articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation.

9. Materials or Equipment Specified by Name. When any material or equipment is indicated or specified by brand or proprietary name or by the name and catalogue number of the manufacturer, the use of an alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be permitted with SETA's prior consent. Request for such substitution shall be made in writing by the Contractor in ample time to permit approval without delaying the work. Until and unless such substitutions are approved by SETA, no deviations from the Plans and Specifications shall be allowed. The burden of proof as to the quality and suitability of the alternative shall be upon the Contractor. SETA shall be the sole judge as to the quality and suitability of alternative materials or equipment.

10. Termination of Contract. Whenever, in the opinion of SETA, the Contractor has failed to supply an adequate force of labor, equipment, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence specified in the contract; or if the Contractor should persistently or repeatedly refuse or fail to comply with laws, ordinances, or directions of SETA; or if the Contractor should consistently fail to make prompt payments to subcontractors, or for labor or materials, SETA may give written notice of at least five (5) calendar days to the Contractor and the Contractor's sureties that if the defaults are not remedied within a time specified in such notice, the Contractor's control over the work will be terminated.

11. Labor Discrimination. Contractor agrees to comply with Section 1735 of the Labor Code of the State of California, which prohibits discrimination in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

12. Protection of Workers. The Contractor shall be responsible for carrying out the applicable occupational safety and health standards and rules enacted to help eliminate or limit workplace hazards proven or suspected by research or experience to be harmful to personal safety and health.

    The Contractor shall conform to the California Occupational Health Act of 1973 (CAL OSHA) and is required by California Labor Code, Section 6400, et seq. to provide a safe and healthful workplace for his/her employees.

    The Contractor shall comply with all applicable safety orders contained in California Code of Regulations, Title 8. Failure of SETA to suspend the work or notify the Contractor of the inadequacy of the safety precautions or noncompliance with existing laws and regulations shall not relieve the Contractor of this responsibility.

13. Unusual Site Conditions. The Contractor shall promptly, and before the site is disturbed, notify SETA in writing if the Contractor suspects or detects that the site contains:

    a) Material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

    b) Subsurface or latent physical conditions at the site differing materially from those indicated in the Plans and Specifications.

    c) Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

       SETA will promptly investigate the conditions, and if SETA finds that the conditions do materially differ or do involve hazardous waste, SETA shall issue a change order, increasing or decreasing contract time or cost or both, as appropriate.

In the event of a dispute, the Contractor shall not be excused from any completion date provided for in the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

14. Change Orders. SETA may at any time require changes in the contract drawings or specifications, or changes to, additions to, or deductions from the work performed or the materials to be furnished. Any such changes will be directed by SETA in writing. Such directives will specify, in addition to a complete description of such change, the work to be done in connection with the change, the adjustment of contract completion time, if any, and the basis of compensation for such work. Directives for changes will be subsequently incorporated in a formal change order to be executed by the Contractor and submitted to SETA for approval.

    Work directed by SETA which will subsequently be incorporated in a change order shall be performed fully and completely, and in accordance with the original contract requirements except for the specific change mentioned in the directive and change order. Drawings accompanying such directives or change orders shall be deemed a part of such directives or change orders.

15. Time of Completion. Time is of the essence in this Agreement. The Contractor shall complete all work called for under the contract within the time set forth.

16. Liquidated Damages for Delay. It is agreed by the parties to this Agreement that time is of the essence, and that in case all work called for under the contract is not completed in all respects and requirements within the time called for, plus any extensions of time which may have been granted, damage will be sustained by SETA, and that it is, and will be, impracticable to determine the actual amount of damage by reason of such delay; and the Contractor agrees that the sum of $100 per day is a reasonable amount to be charged as liquidated damages; and it is therefore agreed that the Contractor will pay to SETA that sum for each and every calendar day's delay beyond the time prescribed; and the Contractor further agrees that SETA may deduct and retain the amount thereof from any monies due the Contractor under the contract.

| ______________________ | ______________________ |
|---|---|
| Contractor's Initials | SETA's Initials |

17. Access to Records. SETA or SETA's authorized representative shall have access, upon reasonable notice, during normal business hours, to any books, documents, accounting records, papers, project correspondence, project files, scheduling information and other relevant records of the Contractor and all subcontractors directly or indirectly pertinent to the original work, as well as change orders and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order or any claim for which additional compensation has been requested or notice of potential claim has been tendered.

    Such books, documents and other records mentioned above shall include, but are not limited to all those reasonably necessary in the opinion of SETA to determine the accurate amount of direct or indirect costs, job site, area and home office overhead, delay and impact costs, however characterized, and

shall include the original bid and all documents related to the bid and its preparation, as well as the as-planned construction schedule and all related documents.

Such access shall include the right to examine and audit such records, and make excerpts, transcriptions and photocopies at SETA's cost. Contractor shall retain all such records for a minimum of three (3) years from the date of this Agreement.

18. Executive Order 11246. For all construction contracts in excess of Ten Thousand Dollars ($10,000), the Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations contained in 41 Code of Federal Regulations, Part 60.

19. Copeland Act. Contractor shall at all times obey and comply with the "Copeland Anti-Kick Back Act" [40 United States Code §3145], as supplemented by the Department of Labor Regulations found at 29 Code of Federal Regulations, Part 3.

20. Davis - Bacon Act. For all construction contracts in excess of Two Thousand Dollars ($2,000) the provisions of the Davis-Bacon Act [40 United States Code §3141-3148], as supplemented by the Department of Labor Regulations contained at 29 Code of Federal Regulations, Part 5, shall apply. Contractor shall comply with all provisions of SETA's Davis-Bacon Act Attachment, a copy of which is attached hereto as Exhibit A-1.

21. Contract Work Hours and Safety Standards Act. For all construction contracts in excess of One Hundred Thousand Dollars ($100,000), that involve the employment of mechanics or laborers, the Contractor shall comply with 40 USC 3702 and 3704 (Contract Work Hours and Safety Standards Act), as supplemented by the Department of Labor Regulations contained in 29 Code of Federal Regulations, Part 5.

22. Payment Bond. For all construction contracts in excess of Twenty-five Thousand Dollars ($25,000), the Contractor shall obtain a Payment Bond as required by California Civil Code Section 3247 in a sum not less than the total amount payable under the construction contract.

23. Performance Bond. For all construction contracts in excess of Twenty-five Thousand Dollars ($25,000), the Contractor shall obtain a Performance Bond in a sum not less than the total amount payable under the contract.

24. Additional Requirements/Contracts in Excess of $150,000. For all contracts in excess of One Hundred Fifty Thousand Dollars ($150,000), the Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387.

25. Debarment and Suspension. (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the

names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. By executing this agreement, Contractor certifies that it is listed as an excluded party under the SAM.

26. Byrd Anti-Lobbying Amendment. Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award. By executing this agreement, Contractor certifies that has not and will not use funds paid under this agreement for any lobbying purposes prohibited by the Byrd Anti-Lobbying Amendment.

27. Solid Waste Disposal Act. In the performance of this agreement, Contractor shall comply with Section 6002 of the Solid Waste Disposal Act (42 USC 6962) regarding the use of the highest percentage of recovered materials practicable where the purchase price of an item exceeds Ten Thousand Dollars ($10,000).

28. Termination for Convenience. For all construction contracts in excess of Ten Thousand Dollars ($10,000), SETA may terminate this contract for convenience at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least fifteen (15) days before the date of termination. In the event of a termination for convenience, Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services to be performed by contractor under this agreement, less payments of compensation previously made. Notwithstanding the foregoing, contractor shall not be released from liability to SETA for damages sustained by SETA by virtue of any breach of this contract by Contractor, including liability to subcontractors or workmen for labor and materials. SETA may withhold any payment to Contractor for purposes of set-off until such time as the exact amount of damages due SETA from Contractor is agreed upon or otherwise determined. SETA shall not be liable for any claims of Contractor for consequential damages.

## EXHIBIT A-1

## DAVIS BACON ACT CONTRACT PROVISIONS

The Davis Bacon Act (Title 40 United States Code §3141-3148) and the regulations adopted thereunder by the U.S. Department of Labor ( Title 29 Code of Federal Regulations §5.5) require all SETA construction contracts for more than $2,000 which are federally funded or federally assisted to include the following standard contract clauses, which are hereby made a part of every SETA Construction Agreement:

"§**5.5 Contract Provisions and Related Matters.**

(a) The agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from federal funds or in accordance with guarantees of a federal agency or financed from funds obtained by pledge of any contract of a federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, that such modifications are first approved by the Department of Labor):

(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 or 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 Act 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 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 therefor only when the following criteria have been met:

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

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

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

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

(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 subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(2) *Withholding.*

The Sacramento Employment and Training Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause

to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (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 Sacramento Employment and Training 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 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 or 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 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 Department of Health and Human Services 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 Sacramento Employment and Training Agency or other designated applicant, sponsor, or owner, as the case may be, for transmission to the Department of Health and Human Services. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under §5.5(a)(3)(i) of the Regulations at 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(*1*) That the payroll for the payroll period contains information required to be maintained under §5.5(a)(3)(i) of the Regulations at 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 the Regulations at 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 this section available for inspection, copying, or transcription by authorized representatives of the Sacramento Employment and Training 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, of if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprenticeship 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 journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at

not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen 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 journeymen 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 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 11248, 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 U. S. Dept. of Health and Human Services (DHHS), Administration for Children and Families (ACF), Office of Head Start 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.*

The Agency head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5 (a) or §4.6 of Part 4 of this title. 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 $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for Unpaid Wages and Liquidated Damages.*

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

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Sacramento Employment and Training Agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours."

**To assist with understanding the above required contract provisions, the definitions found at 29 CFR Section 5.2 are provided as follows:**

"§5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in §5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in §5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia including corporations all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in §5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal aid must pay these employees according to Davis-Bacon Act standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a

building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

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

(1) All types of work done on a particular building or work at a facility which is dedicated to and deemed a part of the site of the work within the meaning of section 5.2(l) of this part by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937 and the Housing Act of 1949, all work done in the construction or development of the project), including without limitation -

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

(ii) Painting and decorating;

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

(iv) Transportation between the actual construction location and a facility which is dedicated to such construction and deemed a part of the site of the work within the meaning of §5.2(l) of this part.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937 and the Housing Act of 1949, and except as provided in paragraph (j)(1)(iv) of this section, the transportation of materials or supplies to or from the building or work by employees of the construction contractor or a construction subcontractor is not “construction” (etc.) (See *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.),*932 F.2d 985 (D.C. Cir. 1991)).

(k) The term “public building” or “public work” includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal Agency.

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

(1) The “site of the work” is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (i)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the “site”.

(2) Except as provided in paragraph (i)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the “site of the work” provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the “site of the work” are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without

regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities, are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms "apprentice" and "trainee" are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment

benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term “wage determination” includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of §1.6 of this title.”

**EXHIBIT B**
**SCOPE OF WORK**
**[Enclose Scope of Work After This Page]**

**EXHIBIT C**
**CONTRACTOR'S BID**
**[Enclose Contractor's Bid After This Page]**

**EXHIBIT D**
**NOTICE TO COMMENCE**

Date: _____

To: _____
_____
_____
_____
[Name and Address of Contractor]

From: Sacramento Employment & Training Agency
925 Del Paso Boulevard
Sacramento, California 95815

Property Location: _____
_____
_____

YOU ARE HEREBY INSTRUCTED TO COMMENCE WORK IN ACCORDANCE WITH YOUR CONSTRUCTION AGREEMENT WITH THE SACRAMENTO EMPLOYMENT & TRAINING AGENCY FOR IMPROVEMENTS ON THE ABOVE-REFERENCED PROPERTIES NO LATER THAN THE COMMENCEMENT DATE SET FORTH BELOW AND TO COMPLETE SUCH WORK NO LATER THAN THE COMPLETION DATE SET FORTH BELOW. YOUR FAILURE TO COMPLETE THE WORK BY THE COMPLETION DATE WILL RESULT IN YOUR LIABILITY FOR LIQUIDATED DAMAGES IN ACCORDANCE WITH THE CONTRACT PROVISIONS.

COMMENCEMENT DATE: _____
[Insert date at least seven (7) days after date of Notice]

COMPLETION DATE: _____
[Insert date at least sixty (60) days after Commencement Date]