

Patricia A. Peshka  
Purchasing Agent



Frank J. Picozzi  
Mayor

**City of Warwick**  
Purchasing Division  
3275 Post Road  
Warwick, Rhode Island 02886  
Tel (401) 738-2013  
Fax (401) 737-2364

The following notice is to appear on the City of Warwick's website Friday, March 12, 2021.  
The website address is <http://www.warwickri.gov/bids>.

**CITY OF WARWICK  
PROPOSALS REQUESTED FOR**

**RFP2021-295 Engineering and Survey Support Services for Improvements to Oakland  
Beach Playground and Splash Pad**

Specifications are available in the Purchasing Division, Warwick City Hall, Monday through Friday, 8:30 AM until 4:30 PM on or after Friday, March 12, 2021.

Sealed proposals will be received by the Purchasing Division, Warwick City Hall, 3275 Post Road, Warwick, Rhode Island 02886 up until 11:00 AM, Tuesday, March 30, 2021. The proposals will be opened publicly commencing at 11:00 AM on the same day in the Lower Level Conference Room, Warwick City Hall. ***Please note due to COVID-19, only one person from each company may attend the bid opening. Employees and visitors must adhere to social distance guidelines. All visitors are advised to wear masks.***

Awards will be made on the basis of the lowest evaluated or responsive proposal price. Please note that no proposals can be accepted via email or fax.

The City of Warwick, in addition to soliciting bids in response to this RFP, may consult, consider, and make an award for any and all open bid offers for a comparable unit as sought herein at the following websites:

RI State MPA: <https://www.ridop.ri.gov/contract-portal/>

NASPO: <https://www.naspo.org/>

NJPA (National Joint Powers Alliance): <https://www.njpacoop.org/cooperative-purchasing>

MHEC (Massachusetts Higher Education Consortium): <https://www.mhec.net/>

Individuals requesting interpreter services for the hearing impaired must notify the Purchasing Division at 401-738-2013 at least 48 hours in advance of the proposal opening date.

**Original Signature on File**

Patricia A. Peshka  
Purchasing Agent

**PLEASE COMPLETE THIS PAGE & SUBMIT WITH YOUR PROPOSAL**

**Acknowledgement of Addendum (if applicable)**

**Addendum Number**

**Signature of Bidder**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

COMPANY ADDRESS: \_\_\_\_\_

COMPANY ADDRESS: \_\_\_\_\_

BIDDER'S SIGNATURE: \_\_\_\_\_

BIDDER'S NAME (PRINT): \_\_\_\_\_

TITLE: \_\_\_\_\_ TEL. NO.: \_\_\_\_\_

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

\*Please include your email address. Future proposals will be emailed, unless otherwise noted.

**II. AWARD AND CONTRACT:**

The CITY OF WARWICK, acting as duly authorized through its Purchasing Agent/Finance Director/Mayor, accepts the above proposal and hereby enters into a contract with the above party to pay the proposal price upon completion of the project or receipt of the goods unless another payment schedule is contained in the specifications. All terms of the specifications, both substantive and procedural, are made terms of this contract.

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

RFP2021-295

\_\_\_\_\_

Purchasing Agent

**PLEASE COMPLETE THIS PAGE & SUBMIT WITH YOUR PROPOSAL**

**CERTIFICATION & WARRANT FORM\***

**This form must be completed and submitted with sealed bid.  
Failure to do so will result in automatic rejection.**

Any and all bids shall contain a certification and warrant that they comply with all relevant and pertinent statues, laws, ordinances and regulations, in particular, but not limited to Chapter 16- Conflicts of Interest, of the Code of Ordinances of the City of Warwick. Any proven violation of this warranty and representation by a bidder at the time of the bid or during the course of the contract, included, but not limited to negligent acts, either directly or indirectly through agents and/or sub-contractors, shall render the bidder's contract terminated and the bidder shall be required to reimburse the City for any and all costs incurred by the City, including reasonable attorney fees, to prosecute and/or enforce this provision.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

**\*This form cannot be altered in any way**

**CITY OF WARWICK  
NOTICE TO BIDDERS**

**RFP2021-295 Engineering and Survey Support Services for Improvements to Oakland Beach  
Playground and Splash Pad**

If you received this document from our homepage or from a source other than the City of Warwick Purchasing Division, please check with our office prior to submitting your proposal to ensure that you have a complete package. The Purchasing Division cannot be responsible to provide addenda if we do not have you on record as a plan holder.

Proposals received prior to the time of the opening will be securely kept, unopened. No responsibility will be attached to an officer or person for the premature opening of a proposal not properly addressed and identified. No proposals will be accepted via facsimile or email.

The opening of proposals will be in the order established by the posted agenda and the agenda will continue uninterrupted until completion.

Once an item has been reached and any proposals on that item has been opened, no other proposals on that item will be accepted and any such proposal will be deemed late.

The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap for any position for which the employee or applicant is qualified and that in the event of non-compliance the City may declare the contractor in breach and take any necessary legal recourse including termination or cancellation of the contract.

A bidder filing a proposal thereby certifies that no officer, agent, or employee of the City has a pecuniary interest in the proposal or has participated in contract negotiations on the part of the City, that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other bidder for the same call for proposals, and that the bidder is competing solely in his own behalf without connection with, or obligation to, any undisclosed person or firm.

All proposals submitted become the property of the City and will not be returned. If the company intends to submit **confidential or proprietary information** as part of the proposal, **any limits on the use or distribution of that material should be clearly delineated in writing. This information should be submitted in a sealed envelope, clearly labeled confidential** and where it should be submitted in the response. Please be advised of the Freedom of Information Act as it may pertain to your submittal.

All proposals should be submitted with one (1) original, three (3) copies and one (1) electronic PDF on a flash drive in a sealed envelope, which should read: *YOUR COMPANY NAME* plainly marked on the exterior of the envelope as well as "RFP2021-295 Engineering and Survey Support Services for Improvements to Oakland Beach Playground and Splash Pad."

Should you have any questions, please contact Lucas Murray, RLA, Special Projects Coordinator in writing at [lucas.murray@warwickri.com](mailto:lucas.murray@warwickri.com). Questions received by Thursday, March 18, 2021 will be answered by addendum.

All proposals should be written in ink or typed. If there is a correction with whiteout, the bidder must initial the change.

Negligence on the part of the bidder in preparing the proposal confers no rights for the withdrawal of the proposal after it is open.

Any deviation from the specifications must be noted in writing and attached as part of the bid proposal. The bidder must indicate the item or part with the deviation and indicate how the proposal will deviate from specifications.

The IRS Form W-9 available on [www.warwickri.gov](http://www.warwickri.gov) should be completed and submitted with the proposal if the bidder falls under IRS requirements to file this form.

The successful bidder must provide the City of Warwick with an original **Certificate of Insurance** for *Professional* Liability in a minimum amount of \$1 million. It is the vendor's responsibility to provide the City of Warwick with an updated certificate of insurance upon expiration of the original certificate.

For a bid to be awarded to a corporation, limited liability company or other legal entity, prior to commencing work under the awarded bid, that corporation, company or legal entity may be required to provide to the Purchasing Agent a **Certificate of Good Standing** from **The Rhode Island Secretary of State** dated no more than thirty (30) days prior to the date upon which the bid approval was made. **Please note that no other State's Certificate of Good Standing will be accepted.**

The successful bidder will provide said **Certificate of Insurance** and **State of Rhode Island's Certificate of Good Standing** (if required) within ten (10) calendar days after notification or the City reserves the right to rescind said award.

Prices to be held firm one (1) year from date of award. Term contracts may be extended for one additional term upon mutual agreement unless otherwise stated.

The contractor must carry sufficient liability insurance and agree to indemnify the city against all claims of any nature, which might arise as a result of his operations or conduct of work.

The City is exempt from the payment of the Rhode Island Sales Tax under the 1956 General Laws of the State of Rhode Island, 44-18-30, Paragraph I, as amended.

The Purchasing Agent reserves the right to reject any and all proposals, to waive any minor deviations or informalities in the proposals received, and to accept the proposal deemed most favorable to the interest of the City.

The successful bidder must comply with all Rhode Island Laws applicable the public works projects, including, but not limited to provisions of Chapter 13 of Title 37 of the Rhode Island General Laws, pertaining to prevailing wage rates, and all other applicable local, state and federal laws.

The City reserves the right to terminate the contract or any part of the contract in the best interests of the City, upon 30-day notice to the contractor. The City will incur no liability for materials or services not yet ordered if it terminates in the best interests of the City. If the City terminates in the interests of the City after an order for materials or services have been placed, the contractor will be entitled to compensation upon submission of invoices and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided, as well as expenses necessarily incurred in the performance of work up to time of termination.

No extra charges for delivery, handling or other services will be honored. All claims for damage in transit will be the responsibility of the successful bidder. Deliveries must be made during normal working hours unless otherwise agreed upon.

All costs directly or indirectly related to the preparation of a response to this solicitation, or any presentation or communication to supplement and/or clarify any response to this solicitation which may be required or requested by the City of Warwick will be the sole responsibility of and will be borne by the respondent.

If the respondent is awarded a contract in accordance with this solicitation and if the respondent fails or refuses to satisfy fully all of the respondents obligations thereunder, the City of Warwick will be entitled to recover from the respondent any losses, damages or costs incurred by the City as a result of such failure or refusal.

The City reserves the right to award in part or full and to increase or decrease quantities in the best interest of the City.

Any quantity reference in the proposal specifications are estimates only, and do not represent a commitment on the part of the City of Warwick to any level of billing activity. It is understood and agreed that the agreement will cover the actual quantities ordered during the contract period.

The City reserves the right to rescind award for non-compliance to proposal specifications.

The successful bidder must adhere to all City, State and Federal Laws, where applicable.

**CITY OF WARWICK, RI**  
**REQUEST FOR PROPOSALS**

**ENGINEERING AND SURVEY SUPPORT SERVICES FOR  
IMPROVEMENTS TO OAKLAND BEACH PLAYGROUND AND SPLASH PAD**

**1. PROJECT OVERVIEW AND PROJECT INTENT**

***1.1 Property Location***

The improvement area (“play area”) is located in the Oakland Beach neighborhood of Warwick at the south end of Oakland Beach Avenue (AP 376, Lot 549 and AP 375, Lot 562) adjacent to the beach area as shown below.



***1.2 Project Background and Description***

Oakland Beach is an extremely popular seasonal destination with direct waterfront access to Narragansett Bay. It has been serving the local and regional communities with passive and active recreation activities since the early 1900's when it was first opened to the public as a beach.

Over time the area has developed to include shops and restaurants such as Top of the Bay and Iggy's Doughboys and Chowder House, which have become famous landmarks. These restaurants are directly adjacent to and increase the usage of the play area. With the vast amount of usage the current play area is in need of a considerable amount of enhancements to provide new amenities that will improve play value and serve a variety of age groups.

The current play area consists of one play structure that is in need of repair or replacement. The adjacent boardwalk and seating areas are degraded but are currently in the process of being replaced. A vegetated coastal buffer is necessary to control and prevent erosion and general site circulation and access is also in need of improvement. In addition, the 2010 Oakland Beach masterplan expressed a need for a splash pad to enhance recreational opportunities for youth that visit the area in the summer.

The City recently received a Recreation Grant from the Rhode Island Department of Environmental Management (RIDEM), as well as a Municipal Resiliency Program Action Grant from the Rhode Island Infrastructure Bank (RIIB), for improvements to the Oakland Beach public recreation area. Improvements to this area are viewed as a priority amongst community stakeholders and the City. The City developed a conceptual masterplan for the site that will be refined further to develop construction level documentation (See Appendix A). The City Planning Department intends to work with community stakeholders to refine the masterplan and develop a full set of bid drawings and specifications with support from a professional consultant.

The City is therefore seeking the services of a qualified engineering and survey firm (or firms) to supply a Class I and III survey the project area, provide civil and structural design support, and assist with the preparation of construction documents and specifications suitable public bidding purposes. **The approximate construction budget for the project is six hundred and fifty thousand dollars (\$650,000).** The construction package may be bid with another nearby coastal resiliency project currently under design by the City and the Coastal Resource Management Council (CRMC). Please refer to Section 2.0 for a full description of the project scope.

### ***1.3 Project Contacts***

All forms and reference information required as part of the RFP submission are contained herein. If you have any further questions regarding submission requirements please contact:

Lucas Murray, RLA, Special Projects Coordinator  
City of Warwick Planning Department  
3027 West Shore Road  
Warwick, RI 02889  
Email: [lucas.murray@warwickri.com](mailto:lucas.murray@warwickri.com)  
Phone: 401-921-9683

**Questions received by Thursday, March 18, 2021 will be answered by addendum.**



## 2. SCOPE OF WORK

### *2.1 Services Required:*

In general, the selected Consultant will be required to perform the following:

- a. Attend a kickoff meeting with the City to conduct a walkthrough of the project area, review the conceptual masterplan and related design documents, and inspect surrounding utility infrastructure (i.e. drainage, electric, water, gas, etc.).
- b. Provide a Class I property boundary and Class III site feature and topography survey of the project area (See Appendix A for specifications a map of the survey area).
- c. Assist city staff with refinement of the play area design as required. Service's will include:
  - a. Peer review of the City prepared layout and grading plans to identify any inaccuracies or possible construction issues. Refine the grading plan as necessary to accommodate necessary drainage infrastructure.
  - b. Identification and analysis of existing utility infrastructure as it pertains to the site development plans.
  - c. Layout, design, and detailing of all necessary utility interconnections which is likely to include electric (splash pad controls and lighting), potable water (splash pad), and drainage (splash pad and impermeable surface areas).
  - d. Assistance with design/ engineering of microswales, bio-retention areas, and other small surface stormwater collection areas to include calculating storage areas and ability to handle various storm events.
- d. Work with the City and their selected steel fabricator on the design of a custom shade/ water play structure as depicted on the conceptual site plan (See Appendix A). Services required include:
  - a. Review of the proposed structure as conceptually designed/ drawn by the City/ Fabricator for loading, wind shear, uplift, structural spans, member sizing, etc. in accordance with current building code requirements. Plans from the City/ Fabricator will depict the general size, shape, design and suggested sizing of structural members to fulfill the aesthetic intent.
  - b. Working with the team to refine the shade/ water play structure to meet the general design intent while meeting all necessary codes and standards. The structural engineer will be required to work with the team through design iterations to ensure design goals are achieved in a safe manner. This may include resizing structural members, supports, and footings to meet code requirements.

- c. Design and detailing of the shelter foundations for conformance with building code requirements.
  - d. Working with the hydraulic engineer (or fountain supply vendor) in collaboration with the City to ensure necessary piping, nozzles, and other elements required for the water play design are appropriately incorporated into the structure. Scope is limited to ensuring that the integrity of the structure remains intact with the incorporation of water play features.
  - e. Assistance with final fabrication drawings in CAD. Plans shall include layout, elevations, and details of the final structure sufficient for bidding and fabrication purposes.
  - f. Providing supporting calculations suitable to meeting permitting requirements.
- e. Assist with the development of construction documents suitable for bidding purposes. Drawings shall be prepared by the City in accordance with standard industry practice. The selected firm will provide the City with the following:
- a. Class I and III Survey Plan (See Appendix A for Specifications)
  - b. Utility plan(s) and related details (layout and details of water, drainage, electric, etc.)
  - c. Details related to soil and erosion control measures
  - d. Shade/ water play shelter layout and fabrication details (drafted in coordination with the City)
- f. Provide the City with project specification sections related to drainage, utilities, and erosion control. Assist the City in drafting a specification for the shade/ water play structure. All specifications shall be in Construction Specification Institute (CSI) format. The City will draft all specifications related to general conditions, earthwork, pavement, play structures, site furnishings, and other elements of the play area design. The consultant may provide specifications integrated with the project drawings if the City and consultant determine that specifications are limited and do not warrant incorporation into a full specification manual.
- g. Provide project cost estimates at the 75 percent and 100 percent design stages.
- h. Assist the City to refine plans, specifications, and related estimates to 100% completion. Final drawings shall be prepared by the City in accordance with standard industry practice and drawn to a suitable scale on 24"X36" sheets. The drawing package is anticipated to include the following:
- a. Cover Sheet.

- b. Class I and III Survey
- c. Layout and Materials Plan
- d. Grading Plan
- e. Utilities Plan
- f. Landscape Plan
- g. Construction detail sheets
- i. Provide all drawings to the City in electronic (PDF/ CAD) format for incorporation with the drawing and bid specification package.
- j. Attend up to two (2) additional project planning meetings with the City to ensure proper coordination of design and bid documents.
- k. Attend one (1) pre-bid meeting to answer questions of prospective bidders.
- l. Attend one (1) preconstruction meeting to review the project scope and answer contractor questions.
- m. Provide ongoing consultation with the City's landscape architect via. phone and e-mail to answer project related questions as necessary (up to 4 working hours).
- n. Attend one (1) meeting with the City to review

## ***2.2 Exclusions***

The selected Consultant **shall not** be required to provide to following:

- a. Design plans for the park, playground, and other general site elements. The general layout, grading, and related site plans will be drafted by the City based on previously developed concept plans (See Appendix A).
- b. Ongoing construction management or clerking services beyond what is outlined in Sections 2.1 and 3.2. Construction of this project will be managed by the City's in-house landscape architect.

## ***2.3 Anticipated Design Elements***

The City has developed a conceptual masterplan for the project site (see Appendix A) that prospective bidders should use as a guide to determine the type of elements expected to be included

in the refined master plan and final construction documents. Elements likely to be included in the final design may include, but are not limited to:

- a. New splash pad play area (city)
- b. Supporting infrastructure for splash pad including water, electric, and drainage infrastructure (consultant)
- c. Shade/ water play structure requiring structural review and refined development (city/ consultant/ steel fabricator)
- d. Site grading and drainage (city/ Consultant)
- e. General paving, site furnishings, plantings, and other landscape enhancements (city)
- f. A bio-retention basin to treat stormwater runoff (consultant/ city)
- g. Coastal embankment with related plantings (city, consultant, Save the Bay)

#### ***2.4 Supplemental Services***

A supplementary service fee will be required as part of the final cost bid from the selected firm. A supplementary service fee is a fixed amount held as part of the service contract, a portion of which may be used for goods and services deemed by the City to be beyond the basic service scope and deliverables outlined in Sections 2.1 and 3.2. The supplemental service fee is intended to cover the cost of support services from an approved steel fabricator for the design of the proposed shade shelter/ water play feature. In addition supplemental service fees may cover the cost of any additional services or materials that cannot be accurately determined as part of the base bid at the time this RFP is issued.

If the Consultant or City identify the need for services and items beyond the basic service fee provided herein a proposal for the service and/or items must be submitted by the Consultant to the City in writing. The City must approve all supplementary service items prior to commencing any activities that will result in an additional cost beyond the base service fee.

The City may require that the Consultant engage the services of a specific vendor or purchase materials that are directly related to the project. The vendor shall be allowed to maximum markup of 10% on any supplementary service or item. Markup by the Consultant shall be clearly defined on any supplementary service proposal. Services that may require the use of supplemental fees under this contract may include, but are not limited to, coastal permitting, design assistance for the shade/ water play structure, and hydraulic engineering. In addition printing and related deliverables beyond those outlined in Section 3.2 may also be compensated from the supplemental service fees upon request and approval by the City.

#### ***2.5 Items Provided to the Selected Consultant***

The City will provide the following to the selected consultant:

- a. Conceptual masterplans and renderings that have been utilized for project funding and in-house discussion (Refer to Appendix A);
- b. Base plan information compiled by the City in electronic format (i.e. aerial overlay plans);
- c. Available as built plans and surveys of the project area from the City's Engineering Division (see Appendix A for reference);
- d. Ongoing updates by the City to the layout and material plans for use in preparing drainage and utility designs and related plans;
- e. Concept plans for the shade/ water play structure for refinement by the structural engineer (see Appendix A for reference);
- f. Other plans, details, and drawings drafted by the City throughout the course of the project.

### **3. PROJECT SCHEDULE AND DELIVERABLES**

#### ***3.1 Schedule***

Within one (1) week of formal written notification of project the Consultant will be required to meet with the City and formulate a project schedule outlining timeframes for completion of the project based on the City's goals and objectives. Time is of the essence and the City would like to have all project drawings and specifications ready for bid within 3 months from the notice to proceed. The schedule may be adjusted based on the community input process, bid timing, and other related project requirements. The entire contract term shall be for one (1) year.

### ***3.2 Deliverables***

The selected Consultant shall:

- a. Attend up to five (5) meetings with the City to include the project kickoff meeting (1), coordination meetings (2), pre-bid (1) and pre-construction (1) meetings as outlined in Section 2.1.
- b. Provide a Class I and Class III survey of the project area (See Appendix A for a map of the survey area and related specifications).
- c. Layout, design, and detail of all necessary utilities to include electric (splash pad controls and lighting), potable water (splash pad), drainage (splash pad and impermeable surface areas), and stormwater management areas (bio-retention basin).
- d. Assist with detailed structural drawings of the shade/ water play structure to include layout, elevations, footings, and details sufficient for bidding, fabrication, and installation purposes.
- e. Formulate project specifications related to drainage, utilities, soil and erosion control, and shade/water structure details. Some specifications may be integrated with the project drawings if the City and consultant determine that specifications are limited and do not warrant incorporation into a full specification manual.
- f. Supply ten (10) hard copies of the final construction drawing set (full size format) for bidding and construction purposes. The completed plans will be provided electronically to the Consultant for printing and binding.
- g. Supply three (3) hard copies of the final construction bid manual for bidding and construction purposes. The completed project manual will be provided electronically to the Consultant for printing and binding.
- h. Provide up to four (4) hours of consultation time during the bid period to answer questions and provide consultation to the City's landscape architect during the project constructions phase via phone or virtual meeting format.
- i. Attend one (1) punch list walkthrough with the City to denote remaining construction items and any areas of concern prior to project completion.

#### **4. CONSULTANT QUALIFICATIONS, SUBMISSION REQUIREMENTS AND SELECTION**

##### ***4.1 Qualification Requirements:***

Interested firms shall:

1. Hold a valid Certificate of Authorization (COA) to practice engineering in the State of Rhode Island pursuant to Pursuant to R.I. Gen. Laws § 5-8-24, et seq.
2. Demonstrate a minimum of five (5) years' experience in the practice of civil/ structural engineering, and land surveying.
3. Demonstrate experience with public bid practices, local and state permitting, and open space projects to include the preparation of applicable drawings, specifications, and bid manuals as evidenced by past project works.
4. Identify a manager for this project with a minimum of five (5) years' of experience in the field of engineering with a license to practice engineering in the State of Rhode Island.
5. Provide a resume with credentials for the professional land surveyor registered in accordance with R.I. Gen. Laws § 5-8.1, et seq. that will be in charge of survey components of the project.
6. Provide a resume with credentials for the registered structural engineer that will be in charge of structural support components of the project.
7. Comply with all applicable regulations of the Warwick Purchasing Division including insurance requirements for professional liability and errors and omissions.

##### ***4.2 Proposal Requirements:***

Interested firms shall provide the following as part of their proposal:

1. A brief cover letter that highlights firm staff, qualifications, and relevant past projects.
2. A brief statement of project understanding that summarizes project deliverables as outlined herein.
3. Resumes of key project staff including the proposed stamping civil engineer, structural engineer, and land surveyor.
4. A minimum of three (3) client references for related past project work.

5. Up to three (3) **relevant** examples of past project work that specifically includes public open space development or related built works. Works that include design of gateways, shelters, bio-retention basins, splash pads, and other similar projects are preferred.
6. All standard City forms as required by the City's Purchasing Department including:
  - a. Vendor Information form with Addenda Acknowledgement;
  - b. Certification and Warrant Form;
  - c. Federal Contract Provision Forms;
  - d. Other related forms as may be contained herein;
7. Form for bid.

#### ***4.3 Submittal Requirements:***

Interested firms shall submit the following for consideration:

1. Four (4) hard copies of the full proposal. Proposals should include:
  - a. GBC plastic spiral binding to ensure contents are secured, fully accessible, and recyclable. Staples are also sufficient. No hard spline or metal bindings.
  - b. A cover page that states the project name, bid number, submittal date, and consultant information.
  - c. All information as outlined in Section 4.2 in the order listed for ease of review.
2. One (1) USB thumb drive, disc, or other storage media with the full proposal scanned or compiled in .PDF format for electronic distribution and review. **Alternatively, you may include a URL link to a cloud shared drive (i.e. Google Drive, Drop Box, etc.) where the electronic copy of the file can be downloaded.** Please include the URL on the cover page of the bid submittal so the City can access and download the file.

#### ***4.4 Consultant Selection Process:***

##### ***4.4.1 Selection Standards***

The City seeks to procure the services of an engineering/ survey firm that:

1. Will be responsive and able to visit the project site and meet in person when necessary as evidenced by the location of staff members. Preference provided to Warwick based firms.
2. Demonstrates a clear understanding of the project requirements and deliverables as evidenced through the statement of project understanding.



3. Clearly understands the existing site condition and outlines an approach based on site observations and an understanding of the surrounding area as evidenced by the statement of project approach.
4. Allocates experienced staff capable of providing project deliverables as evidenced through each team members resume and past project and work experience.
5. Will provide an experienced project manager with the necessary skills and certifications to lead the project to fruition as evidenced through a complete resume outlining accomplishments and past work experience.
6. Demonstrates experience with similar past project work through evidence of past project work samples and accompanying project related descriptions.
7. Provides a high quality proposal that is organized and concisely conveys necessary information and conforms with the specific instructions provided herein.

#### ***4.4.2 Proposal Scoring***

The City will rate each proposal based on a **maximum of 100 points**. Criteria for selection will include the following:

1. The location of the subject firm and ability to visit the site or attend meetings in a timely manner. Preference given to firms based in Warwick and the State of Rhode Island. Ratings will be as follows:
  - a. Warwick based firms = **5 Points**
  - b. Rhode Island based firms = **3 points**
  - c. Out of State firms = **0 points**
2. The firm's understanding of the project scope and deliverables as evidenced by the statement of project understanding and cover letter = **15 Points**
3. The firm's overall project approach based on the statement of project approach and cover letter = **15 Points**
4. Evidence of a personal site visit with photos and elaborative observations = **5 Points**
5. Experience and qualifications of the firm and assigned personnel as evidenced through an evaluation of resumes and past project work experience = **15 points**
6. Past project experience with design and construction of ornamental gateways and shelter structures; bio-retention basins; utilities; surveying; and other relevant services as evidenced through past project work samples and narratives = **20 Points**
7. A minimum of three (3) past project references provided = **10 Points** (prorated for each reference not provided).
8. Overall quality of the proposal. Content is organized. Respondent followed instructions – **10 Points**
9. Up to **5 points** may be granted if the reviewer determines the proposal exceeds the standards and is exemplary in one or more of the following:

- a. Organization and layout – proposal is well written, concise, and utilizes a balance of text and images to communicate necessary information effectively.
- b. Content – proposal includes evidence that a site visit, research, or other additional efforts were taken to enhance the overall content and substance of the proposal.
- c. Experiential alignment – The respondent provides high quality examples of past project experience that directly aligns with current project needs and goals.

**NOTE:** All points indicated are the maximum available. Scores may be pro-rated or scaled in each category by the reviewing party. Three (3) representatives from the City will independently rate each proposal based on the criteria outlined herein. Scores will then be combined and firm(s) selected based on a ranking of the combined average score.

#### ***4.4.3 Negotiation***

After ranking is completed the City will affirm the selection of the top three (3) firms with the City Council for further negotiation in accordance with RIGL §45-55-8.1 and Federal Architect-Engineer Selection Law, Brooks Law, 40 U.S.C. § 541 as follows:

1. The City will contact the most highly qualified (top ranked) firm and request a price proposal for services as outlined herein.
2. The City may accept the price proposal as provided or further negotiate the cost of services.
3. If the City is unable to negotiate a satisfactory contract with the firm, negotiations will be terminated and negotiations with undertaken with the next most qualified of the selected firms. The process will continue until an agreement is reached.
4. If the City unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

**City of Warwick**  
**Office of Housing & Community Development**

**Forms To Be Included in the Contractor's Bid Submittal**

The following documents need to be completed and submitted with original bid:

- Certification Regarding Debarment and Suspension (2 pages)
- Equal Opportunity Certification (2 pages)
- Anti-Lobbying Certification (1 page)
- Contractor Compliance Form Section 3 (7 pages)
- Section 3 Plan Certification (1 page)
- Certification of Bidder Regarding Section 3 and Segregated Facilities (1 page)
- City of Warwick Community Development Program Affirmative action Plan for Utilizing Local Businesses (2 pages)
- Minority Contractor Participation (1 page)
- Civil Rights, Employment and Contracting Opportunities and Other Federal Requirements (3 pages)

In addition, once awarded, all subcontractors will be required to complete the above forms and comply with the regulations referenced in the contract provisions.

**\*\*NOTE\*\***

All the above forms are also contained in the Federal Construction Contract Provisions of the Bid Package. The forms have been appended to the bid submittal for ease of reference.

# Certification Regarding Debarment and Suspension

U.S. Department of Housing  
and Urban Development

## Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

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

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

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

### Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

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

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

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

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

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

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

**Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title

**Equal Employment  
Opportunity Certification**  
Excerpt From 41 CFR §60-1.4(b)

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

Department of Veterans Affairs  
OMB Control No. 2502-0029  
(exp. 9/30/2016)

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

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

By

Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Excerpt from HUD Regulations**

##### **200.410 Definition of term "applicant".**

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

##### **200.420 Equal Opportunity Clause to be included in contracts and subcontracts.**

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

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

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

##### **200.425 Modification in and exemptions from the regulations in this subpart.**

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

# Lobbying

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

## APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date



# Contractor Compliance Form

# Section 3

THIS FORM MUST BE COMPLETED BY ALL GENERAL CONTRACTORS AND SUBCONTRACTORS PROVIDING BIDS

Property Owner's Name

Property Owner's Address

## SECTION I. CONTRACTOR INFORMATION

Name

Address

Type of Business

RI Registration No.

SECTION 3 BUSINESS

YES  No

WOMEN BUSINESS ENTERPRISE (WBE)

YES  No

MINORITY BUSINESS ENTERPRISE (MBE)

YES  No

Bidding as a:

General Contractor

Sub-Contractor, indicate General Contractor name

Current number of employees

Current number of women employees

Current number of minority employees

If minority employees enter racial/ethnic code from below:

Code

1

2

3

4

5

6

Number:

### RACIAL/ETHNIC CODES

1. White

2. Black/African American

3. American Indian/Alaskan Native

4. Asian

5. Native Hawaiian/Pacific Islander

6. Hispanic/Latino

Total Dollar amount of Bid \$

(if exceeds \$100,000, complete Section II)

**SECTION II. New Hires when Bid exceeds \$100,000 (must comply with Section 3 requirements)**

	Number of New Hires	Number of new hires that are Section 3 Residents
Number of employees to be hired for this contract	<input type="text"/>	<input type="text"/>
Number of professionals to be hired for this contract	<input type="text"/>	<input type="text"/>
List Professional trade hired	<input type="text"/>	<input type="text"/>
Number of technicians to be hired for this contract	<input type="text"/>	<input type="text"/>
List Technician trade hired	<input type="text"/>	<input type="text"/>
Number of Office/Clerical to be hired for this contract	<input type="text"/>	<input type="text"/>
Number of Construction by trade to be hired for this contract	<input type="text"/>	<input type="text"/>
List below each type of trade for which there were new hires. Add Trades as necessary		
Plumber	<input type="text"/>	<input type="text"/>
Electrician	<input type="text"/>	<input type="text"/>
Carpenter	<input type="text"/>	<input type="text"/>
Masonry	<input type="text"/>	<input type="text"/>
Laborers	<input type="text"/>	<input type="text"/>
Other (specify) _____	<input type="text"/>	<input type="text"/>
Total number of Section 3 trainees to be hired	<input type="text"/>	<input type="text"/>
Number of Low-Income Project Area Residents (L.I.P.A.R.) to be hired	<input type="text"/>	<input type="text"/>

**1. Construction Contracts**

- A. Total dollar amount of all contracts awarded on the project
- B. Total dollar amount of contracts awarded to Section 3 businesses
- C. Percentage of the total dollar amount that was awarded to Section 3 businesses
- D. Total number of Section 3 businesses receiving contracts

\$	<input type="text"/>
\$	<input type="text"/>
\$	<input type="text"/>
\$	<input type="text"/>

**2. Non-Construction Contracts**

- A. Total dollar amount of all contracts awarded on the project
- B. Total dollar amount of contracts awarded to Section 3 businesses
- C. Percentage of the total dollar amount that was awarded to Section 3 businesses
- D. Total number of Section 3 businesses receiving contracts

\$	<input type="text"/>
\$	<input type="text"/>
\$	<input type="text"/>
\$	<input type="text"/>

**SECTION III. SUMMARY**

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

Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or Nonmetropolitan County) in which the Section 3 covered program or project is located or similar methods.

Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

Other; describe below

I hereby certify that it is the policy of the undersigned to comply with all existing laws prohibiting discrimination in all aspects of employment due to race, color, creed, sex, age, religion, national origin, marital status, receipt of public assistance or disability.

This shall be accomplished substantially by the following actions: Nondiscrimination in RECRUITING, HIRING, TRAINING, PROMOTING, SUBCONTRACTING, DEMOTION, LAYOFF, and/or TERMINATION.

General Contractor/Subcontractor Signature

Date

## Contractor/Subcontractor Section 3 Compliance Plan

- A. The undersigned Contractor/Subcontractor for the \_\_\_\_\_ project hereby agrees to implement at least the following steps directed at increasing the utilization of Section 3 residents and Section 3 business in accordance with 24 CFR Subpart A Part 135.1 to attempt to recruit from within the project area Section 3 residents through; local advertising media, signs placed at the proposed site for the project and community organizations and public or private institutions operating within or serving the project area.
- B. To seek the assistance, where necessary, in implementing a Section 3 compliance plan.
- C. To maintain a list of all Section 3 area residents who have made application for employment either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To maintain and provide the information requested on the Section 3 Summary Report (HUD 60002) related to employment and training records of Section 3 residents.
- E. To include this Section 3 compliance in all bid documents and to require all bidders to submit a Section 3 compliance plan including utilization goals and the specific steps planned to accomplish these goals.
- F. In the case of a general contractor, to insure that all Section 3 business concerns within the project area are notified of pending sub-contractual opportunities.
- G. To require all subcontractors to complete the Contractor Compliance Form before awarding any contracts.
- H. To maintain records, including copies of correspondence, memoranda, etc., which documents all steps taken to recruit Section 3 residents and Section 3 subcontractors from within the project area.
- I. To provide the information requested on Contract Compliance Activity Report related to contractors and subcontractors Notified and selected and the number of women and minority employees, the number of vacant positions and the Positions filled with lower income project area residents.

As officers and representatives of \_\_\_\_\_

Name of Contractor/Subcontractor

We the undersigned, have read and fully agree to this Section 3 Compliance Plan, and become a party to the full implementation of this program.

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Section 3 Clause

All Section 3 covered contracts shall include the following Section 3 clause:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD Assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low – and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice of advising the labor organization or worker’s representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract Or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.
- F. Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

F. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract Section 7 (b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Print Name:

Title

Date

Print Name

Title

Date

## Section 3, Women, Minority Business Concern Questionnaire

Business Name

Business Contact Person

Address

Phone Number

1. Is your business a Section 3 Business Concern?  Yes  No
2. Is your business a Women-Owned business concern?  Yes  No  
2. (a) Please list any self-certifications, agency certifications, and/or program certifications your Business holds: \_\_\_\_\_
3. Is your business a Disadvantaged/Minority-owned business concern?  Yes  No

**What is a Section 3 business concern?** (Adapted from <http://www.hud.gov/offices/fheo/section3/Section3.pdf>)

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provide evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or More of the dollar amount of the awarded contract.

**Who are Section 3 residents?**

(HUD Income Limits available online <http://hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/index.cfm>)

Section 3 residents are:

- Public housing residents or,
- Persons who live in the area where a HUD-assisted project is located and who have a household Income that falls below HUD's income limits

**Determining Income Levels**

- Low income is defined as 80% or below the median income of that area
- Very low income is defined as 50% or below the median income of that area

**How is a "woman-owned small business" defined?** (Adapted from <http://www.vwbc.org/documents/wobCERT.pdf>)

The Federal Acquisition Regulations (FAR) defines a "woman-owned small business concern" in Part 19.001 Definitions, as follows: "Woman-owned small business concern means a small business concern –(a) which is at least 51 percent owned by one or more women; or, in case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (b) whose management and daily business operations are controlled by one or more women."

**How is a "minority-owned business" defined?**

Although definitions vary, in general a minority-owned business is a for-profit enterprise, physically located in the United States or its trust territories, which is owned, operated, and controlled by minority group member(s). "Minority group members" most often identified are US Citizens who are Asian, African-American, Hispanic, and Native American (for a complete listing, see <http://www.sba.gov/library/cfrs/13cfr124.html>). Ownership by minority individuals means the business is at least 51 percent owned by such individuals, or, in case of a publicly-owned business, at least 51 percent of the stock is owned by one or more such individuals. Further, the management and daily operations are controlled by those minority group members.

**Certification** – The information above is true and complete to the best of my knowledge and belief.

Signature

Date

### Section 3 Plan Certification

\_\_\_\_\_ agrees to implement the following specific affirmative action  
(Name of Contractor)  
directed at increasing the utilization of lowest income residents and businesses within the City of  
Warwick.

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and were advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City of Warwick the necessary number of lower income residents through; Local advertising media, sign placed at the proposed site for the project, and community organizations and public private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on a referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 plan in all bid documents, and to require all bidders and subcontractors to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To insure the subcontracts which are typically let on a negotiated rather than bid basis in area other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To insure that all appropriated project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

As officers and representatives of \_\_\_\_\_ we, the undersigned,  
(Name of Contractor)  
have read and  
fully agree to this Affirmative Action Plan, and become party to the full implementation of this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES**

---

Name of Prime Contractor

---

Project Name & Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract.
2. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).
3. No segregated facilities will be maintained.

---

Name & Title of Signer (Print or Type):

---

Signature Date

City of Warwick  
Community Development Program

Affirmative Action Plan  
for  
Utilizing Local Businesses

This plan sets forth the procedures by which the City of Warwick will assure that to the greatest extent feasible contracts for work in connection with the City's Community Development Program will be awarded to business concerns which are located in or owned in substantial part by persons residing in the City of Warwick. These procedures are set forth in compliance with the rules and regulations in Part 135 of Title 24 of the Code of Federal Regulations entitled "Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects" published on August 3, 1973. It is the intent of this plan that the City and its contractors follow these procedures in awarding any work financed under the City's Community Development Program.

1. At the beginning of each Community Development Program Year the City will prepare and make available to the public a list of contracts expected to be awarded and a description of the professional category or classification of each type of service or supplied to be provided in order to carry out the Community Development Program.
2. The City will prepare a list of businesses known to be located within the City which appear to be eligible to provide the services, supplies or construction work in order to determine the availability of local businesses for each contract listed in compliance with No. 1 above.
3. The City and its contractors shall, where feasible, award all contracts to local businesses. Reasons for awarding contracts to other firms shall be documented. Sufficient reason for awarding contracts to firms outside the City shall include non-competitive bids or the unavailability of local firms or individuals who can provide the services or supplies required.
4. The City and its contractors shall comply with the following procedures in order to assure that local businesses are afforded the opportunity to contract with the City or other contractors under the Community Development Program:
  - (a) The Community Development Program's Affirmative Action Plan for Utilizing Local Businesses shall be inserted into all bid documents for work funded under the Community Development Program.
  - (b) Local businesses for the purpose of complying with these procedures shall be those located within the entire City of Warwick or owned in substantial part by residents of Warwick.
  - (c) All contractors and subcontractors shall certify their intent to comply with the objectives and procedures of this plan prior to signing a contract with the City. All contracts and subcontracts will be awarded in compliance with this plan and must be approved by the City of Warwick in writing.

(d) Opportunities or contracts under the Community Development Program shall be advertised in the metropolitan and local newspapers. A notice of the pending contract shall be posted on the site, where applicable, or in the City Hall. Notification of pending contractual opportunities shall be sent to the City's Purchasing Agent.

(e) All contracts for more than \$1,000 shall be awarded on the basis of competitive bids in conformance with City and Federal procedures.

(f) All bids or proposals must be accompanied by a list of all positions for employment or training by occupational category and a list of all subcontracts necessary to fulfill the contract. In addition, each bidder shall submit with the bid, a certification adopting this plan for utilizing local businesses.

I, \_\_\_\_\_, certify that I have  
(Contractor)

read and understand the Community Development Program's Affirmative Action Plan for Utilizing Local Businesses and further certify that all work let out under this contract shall be in conformance with its objectives and procedures. I understand that I am certifying that to the greatest extent feasible all sub-contracts or other work let out under this contract will be awarded to businesses located in Warwick or businesses which are owned in substantial part by residents of Warwick.

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
(Contractor)

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

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

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

## MINORITY CONTRACTOR PARTICIPATION

Name of Prime Bidder

Indicate whether or not you will be subcontracting a portion of this contract to a minority business \_\_\_ Yes \_\_\_ No

If yes, list the names of minority subcontractors who will be performing work for you.

Type of Work (Electrical, Paving, etc.) and Name of Contract items

Minority Contractor	Address	Parts thereof to be performed	Agreed Price

NOTE: Minority person means an individual who is Black, Hispanic, Asian American, American Indian, Alaskan Native or a woman regardless of race or ethnicity.

Minority contractor means a contractor which is:

1) an individual, who is a Minority Person, 2) a partnership or joint venture controlled by minority persons and in which at least 51 percent of the beneficial ownership interests are held by minority persons, or 3) a corporation or other entity controlled by Minority Persons in which at least 51 percent of voting interest and beneficial ownership interests are held by Minority Persons.

## **Civil Rights, Employment and Contracting Opportunities, and Other Federal Requirements**

**Americans with Disabilities Act of 1990 (ADA):** This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

**Architectural Barriers Act of 1968 (ABA) - (42 U.S.C. 4151-4157):** This Act requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards.

**Disadvantaged Business Enterprises (DBE):** It is the policy of HUD to encourage the award of prime contracts valued at \$100,000 or more to small disadvantaged business (SDB) concerns (other than certified 8(a) firms) that are at least 51 percent owned and controlled by socially and economically disadvantaged individuals.

**Fair Labor Standards Act (FLSA) [as amended] - 29 U.S.C. 201 et seq.:** The U.S. Department of Labor (DOL) administers and enforces the minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

**Immigration Reform and Control Act (IRCA) of 1986:** Employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).

**Minority and Women-Owned Business Enterprises (MBE/WBE) - 24CFR Part 85.36 (e) (1):** It is the policy of HUD to actively encourage contractors to take all necessary affirmative steps to assure that small and minority firms, Women’s business enterprise and labor surplus area firms as used as subcontractors when possible. A minority or women-owned small business concern is defined as owned by at least 51 percent minority group members or women.

**Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et. seq., particularly 42 U.S.C. 6101 et. seq., and 29 U.S.C. 794):** This section provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the

basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.

**Section 504 of the Rehabilitation Act of 1973, as amended (implemented at 24 CFR Part 135):** It is unlawful to discriminate based on disability in federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

**Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotions, transfer, demotions, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.

**Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

**Violation or Breach of Contract:** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**Termination for Cause and for Convenience:** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**Rights to Inventions Made Under a Contract or Agreement:** If the agreement with the contractor is for the performance of experimental, developmental, or research work, including any assignment, substitution of parties, or subcontract of any type entered into for such purpose, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended:** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to

comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Procurement of Recovered Materials:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**HUD Lead-Based Paint Regulations, 24 CFR Part 35**

**Flood Disaster Protection Act of 1973 (P.L. 93-243)**

**Nondiscrimination under Title VI of the Civil Rights Act of 1964 (as Amended)**

**Acknowledgment of Bidding Firm to comply with the above referenced Federal Regulations where applicable:**

\_\_\_\_\_  
Print Name: (Contractor)

\_\_\_\_\_  
Date

# **Federal Construction Contract Provisions**

Community Development Block Grant  
Program

City of Warwick  
Office of Housing & Community  
Development



# Certification Regarding Debarment and Suspension

U.S. Department of Housing  
and Urban Development

## Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

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

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

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

### Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

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

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

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

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

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

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

**Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official	Title	

**Equal Employment  
Opportunity Certification**  
Excerpt From 41 CFR §60-1.4(b)

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

Department of Veterans Affairs  
OMB Control No. 2502-0029  
(exp. 9/30/2016)

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

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

By

Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Excerpt from HUD Regulations**

##### **200.410 Definition of term "applicant".**

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

##### **200.420 Equal Opportunity Clause to be included in contracts and subcontracts.**

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

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

(2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by referenced to the equal opportunity clause.

##### **200.425 Modification in and exemptions from the regulations in this subpart.**

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

(1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

(2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

(3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

(4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

(5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

# **Federal Construction Contract Provisions**

**Community Development Block Grant  
Program**

**City of Warwick  
Office of Housing & Community  
Development**

**§401.14 Standard patent rights clauses.**

(a) The following is the standard patent rights clause to be used as specified in §401.3(a).

*Patent Rights (Small Business Firms and Nonprofit Organizations)*

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the

invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

#### (d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

#### (e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such

other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

#### (f) *Contractor Action to Protect the Government's Interest*

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the *Federal agency*). The government has certain rights in the invention."

#### (g) *Subcontracts*

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the *Federal agency* was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the *contractor* agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the *Federal agency* with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

#### (h) *Reporting on Utilization of Subject Inventions*

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the *contractor*, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause.



As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

#### (i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

#### (j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

#### (k) Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the

capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

#### (l) Communication

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3(a)(4), the standard clause at §401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at §401.5(g).

(c) As prescribed in §401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant

the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[52 FR 8554, Mar. 18, 1987, as amended at 69 FR 17301, Apr. 2, 2004]

## Clean Water Requirements

**33 U.S.C. 1251**

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the State.

## CLEAN AIR

**42 U.S.C. 7401 *et seq***

**40 CFR 15.61**

**49 CFR Part 18**

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by OHCD/HUD.

# Lobbying

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

## APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.* )]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

### **Procurement of Recovered Materials**

a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

*Source: form HUD-5370-C*

**EXCERPT FROM TITLE 24-HOUSING AND URBAN DEVELOPMENT  
PART 135-EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER INCOME  
PERSONS IN CONNECTION WITH ASSISTED PROJECTS**

(m) "Section 3 covered project" means any nonexempt project assisted by any program administered by the Secretary in which loans, grants, subsidies, or other financial assistance are provided in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development (except where the financial assistance available under such program is solely in the form of insurance or guaranty). Projects, contracts, and subcontracts, connected with programs administered by the Secretary under section 235 and 236 of the National Housing Act as well as any Public Housing program and which do not exceed \$500,000 in estimated cost are exempted from the requirements of this part, as is any subcontract of \$50,000 or under on such projects or contracts in excess of \$500,000.

**Section 135.20 Assurance of compliance with regulations.**

(a) Every contract or agreement for a grant, loan, subsidy, or other direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, entered into by the Department of Housing and Urban Development with respect to a section 3 covered project shall contain provisions requiring the applicant or recipient to carry out the provisions of section 3, the regulations set forth in this part, and any applicable rules and orders of the Department issued there under prior to approval of its application for assistance for a section 3 covered project.

(b) Every applicant, recipient, contracting party, contractor, and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a section 3 covered project, the following clause (referred to as a section 3 clause):

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

B. The parties to this contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations and all applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified.

Subpart C-Utilization of Lower Income Area Residents as Employees.

Section 135.55 General.

Each applicant, recipient, contractor or subcontractor undertaking work in connection with a section 3 covered project shall fulfill his obligation to utilize lower income project area residents as employees to the greatest extent feasible by:

(a) Identifying the number of positions in the various occupational categories including skilled, semiskilled and unskilled labor, needed to perform each phase of the section 3 covered project;

(b) Identifying, of the positions identified in paragraph (a) of this section, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;

(c) Identifying, of the positions identified in paragraph (a) of this section, the number of positions in the various occupational categories which are not currently occupied by regular, permanent employees;

(d) Establishing, of the positions identified in paragraph (a) of this section, a goal which is consistent with the purpose of this subpart within each occupational category of the number of positions to be filled by lower income residents of the section 3 covered project area; and



(e) Making a good faith effort to fill all of the positions identified in paragraph (d) of this section with lower income project area residents.

#### Section 135.60 Good faith effort.

(a) Each applicant, recipient, contractor, or subcontractor seeking to establish that a good faith effort as required by paragraph (e) of section 135.55 has been made to fill all employment positions identified in paragraph (d) of Section 135.55 with lower income project area residents shall, as a minimum, set forth evidence acceptable to the Secretary that it has:

(1) Ascertained from the Department's Regional Administrator, Area Office Director, or FHA Insuring Office Director having jurisdiction over the section 3 covered project the boundaries of the section 3 covered project area; and

(2) Attempted to recruit from the appropriate areas the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Project Area Committees (PAC) in urban renewal areas, Model Cities citizen advisory boards, Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service.

(b) Any applicant, recipient, contractor or subcontractor which fills vacant Section 135.55 (d) employment positions in its organization immediately prior to undertaking work pursuant to a section 3 covered contract shall set forth evidence acceptable to the Secretary that its actions were not an attempt to circumvent these regulations.

(c) When lower income resident workers apply, either on their own initiative or on referral from any source, the recipient, contractor, or subcontractor shall determine the qualifications of such persons and shall employ such persons if their qualifications are satisfactory and the contractor has openings. If the recipient, contractor, or subcontractor is unable to employ the workers, such persons shall be listed for the first available opening.

#### Subpart D-Utilization of Business Located in or Owned in Substantial Part by Persons Residing in the Area.

#### Section 135.65 General.

Each applicant, recipient, contractor or subcontractor undertaking work on a section 3 covered project shall assure that to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the section 3 covered project area or business concerns owned in substantial part by persons residing in the section 3 covered area. The Department, in consultation with the Small Business Administration will establish for the section 3 covered project area a registry of business concerns which meet the definition contained in section 135.5 (b) and (c). Each applicant,

recipient, contractor, or subcontractor undertaking work in connection with a section 3 covered project shall fulfill his obligations to utilize business concerns located within or owned in substantial part by persons residing in the section 3 covered project area by developing and implementing an affirmative action plan.

## SECTION 3 REQUIREMENTS

### 1. Policy

The Department of Housing and Urban Development (HUD) requires that any contract let under the Community Development Block Grant Program be in accordance with the regulations of 24 CFR 135 and Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u. These regulations state that preference must be given in employment and training opportunities and in contracts to be let to lower-income project area residents and eligible Section 3 businesses, respectively.

### 2. Section 3 Business

An "eligible Section 3 business" means any business concern which meets one of the following standards:

(a) The business is located in the project area and qualifies as a small business using SBA standards.

(b) The business is located outside the project area and qualifies as small using SBA standards. In addition, at least 51 percent of the business is owned by persons who reside in the project area and who qualify under SBA standards as socially or economically disadvantaged.

SBA standards for qualification as a small business are as follows:

(a) Wholesale - annual receipts no more than \$5 million to \$15 million depending on the industry.

(b) Retail or Service - annual receipts no more than \$1 million to \$5 million depending on industry.

(c) Construction - annual receipts not more than \$5 million averaged over the last 3 years.

(d) Manufacturing - no more than 250 to 1,500 employees, depending on the industry.

Precise criteria may be found in Part 121, Title 13 of the Code of Federal Regulations.

Qualifications as an "economically or socially disadvantaged Person" may be achieved by meeting any one of the following SBA standards:

(a) Member of a minority group which has been deprived of access to normal economic financial resources.

(b) An identifiable physically handicapped person, where the handicap severely limits that person's ability to obtain financial assistance to enter or to improve a business.

(c) Any person whose residence and business are located in an area where the local banking community is unable or unwilling to provide small business financing.

(d) Any honorable discharged Vietnam-era veteran (since August 5, 1964).

### 3. Bidding Procedure

All successful bidders must submit prior to contract award their Section 3 plan. This plan will contain a preliminary Statement of Workforce Needs (attachment A1, 2) outlining goal for utilization of lower-income project area residents, and an Affirmative Action Plan (Attachment B) for Section 3 Businesses outlining goals for award of subcontracts to eligible Section 3 businesses. This plan will be evaluated for its consistency with the overall goals of the municipality, and whether the affirmative action proposed by the contractor will achieve the goal. Failure to submit an acceptable Section 3 Plan shall result in bid rejection.

**§ 135.38 Section 3 Clause.**

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

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

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

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

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

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

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

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

### Instructions

The Contractor shall submit a preliminary statement of work force needs (skilled, semi-skilled, unskilled labor and trainees by category) where known with the bid (Contractor Compliance Form). As evidence of compliance with the regulations in 24 CFR 135, the contractor shall provide the City with the following information prior to the awarding of the contract:

1. A list of all positions required for the completion of the contract.
2. A list of all positions which are presently vacant or which will be new positions which will become available under the Contract.
3. A list of the maximum number of training positions which may be utilized under the program.
4. A list of training positions which are currently vacant or which are new positions to become available under the Contract.
5. Goals for filling available positions for employment and training with lower income Warwick residents and the methods to be used to recruit lower income Warwick residents pursuant to the regulations in 24 CFR 135, Subparts B and C.
6. A list of all subcontracts and/or work to be let out in connection with the project including the type of businesses to be used and the dollar value of all work or contracts.
7. A goal and affirmative action plan for utilizing Warwick businesses pursuant to the regulations in 24 CFR 135, Subpart D.

#### 8. Compliance Reports

The contractor and all subcontractors shall be monitored through compliance reports submitted monthly to the Chief Executive Officer of the municipality, or to his designee: **William R. Facente**. Failure to make a good faith effort to implement this Section 3 Plan shall result in termination for cause of the contract.

#### 9. Certification as a Lower-Income Person

As you will note from the example Section 3 Plan, you are required to maintain a list of qualified lower-income persons who apply for work with your business as a result of award of this contract. It is your responsibility to determine if such an applicant for employment does in fact qualify as a lower-income person residing in the project area. This requirement can be satisfied by using an application and certification form which will be provided to the applicant when he/she applies.

# Contractor Compliance Form

# Section 3

THIS FORM MUST BE COMPLETED BY ALL GENERAL CONTRACTORS AND SUBCONTRACTORS PROVIDING BIDS

Property Owner's Name

Property Owner's Address

## SECTION I. CONTRACTOR INFORMATION

Name

Address

Type of Business

RI Registration No.

SECTION 3 BUSINESS

YES  No

WOMEN BUSINESS ENTERPRISE (WBE)

YES  No

MINORITY BUSINESS ENTERPRISE (MBE)

YES  No

Bidding as a:

- General Contractor
  - Sub-Contractor, indicate General Contractor name
- 

Current number of employees

Current number of women employees

Current number of minority employees

If minority employees enter racial/ethnic code from below:

Code

1

2

3

4

5

6

Number:

### RACIAL/ETHNIC CODES

1. White

2. Black/African American

3. American Indian/Alaskan Native

4. Asian

5. Native Hawaiian/Pacific Islander

6. Hispanic/Latino

Total Dollar amount of Bid \$

(if exceeds \$100,000, complete Section II)

**SECTION II. New Hires when Bid exceeds \$100,000 (must comply with Section 3 requirements)**

	Number of New Hires	Number of new hires that are Section 3 Residents
Number of employees to be hired for this contract	<input type="text"/>	<input type="text"/>
Number of professionals to be hired for this contract	<input type="text"/>	<input type="text"/>
List Professional trade hired	<input type="text"/>	<input type="text"/>
Number of technicians to be hired for this contract	<input type="text"/>	<input type="text"/>
List Technician trade hired	<input type="text"/>	<input type="text"/>
Number of Office/Clerical to be hired for this contract	<input type="text"/>	<input type="text"/>
Number of Construction by trade to be hired for this contract	<input type="text"/>	<input type="text"/>
List below each type of trade for which there were new hires. Add Trades as necessary		
Plumber	<input type="text"/>	<input type="text"/>
Electrician	<input type="text"/>	<input type="text"/>
Carpenter	<input type="text"/>	<input type="text"/>
Masonry	<input type="text"/>	<input type="text"/>
Laborers	<input type="text"/>	<input type="text"/>
Other (specify) _____	<input type="text"/>	<input type="text"/>
Total number of Section 3 trainees to be hired	<input type="text"/>	<input type="text"/>
Number of Low-Income Project Area Residents (L.I.P.A.R.) to be hired	<input type="text"/>	<input type="text"/>

**1. Construction Contracts**

- A. Total dollar amount of all contracts awarded on the project \$
- B. Total dollar amount of contracts awarded to Section 3 businesses \$
- C. Percentage of the total dollar amount that was awarded to Section 3 businesses \$
- D. Total number of Section 3 businesses receiving contracts \$

**2. Non-Construction Contracts**

- A. Total dollar amount of all contracts awarded on the project \$
- B. Total dollar amount of contracts awarded to Section 3 businesses \$
- C. Percentage of the total dollar amount that was awarded to Section 3 businesses \$
- D. Total number of Section 3 businesses receiving contracts \$

**SECTION III. SUMMARY**

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

Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or Nonmetropolitan County) in which the Section 3 covered program or project is located or similar methods.

Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

Other; describe below

---

I hereby certify that it is the policy of the undersigned to comply with all existing laws prohibiting discrimination in all aspects of employment due to race, color, creed, sex, age, religion, national origin, marital status, receipt of public assistance or disability.

This shall be accomplished substantially by the following actions: **Nondiscrimination in RECRUITING, HIRING, TRAINING, PROMOTING, SUBCONTRACTING, DEMOTION, LAYOFF, and/or TERMINATION.**

General Contractor/Subcontractor Signature

Date



## Contractor/Subcontractor Section 3 Compliance Plan

- A. The undersigned Contractor/Subcontractor for the \_\_\_\_\_ project hereby agrees to implement at least the following steps directed at increasing the utilization of Section 3 residents and Section 3 business in accordance with 24 CFR Subpart A Part 135.1 to attempt to recruit from within the project area Section 3 residents through; local advertising media, signs placed at the proposed site for the project and community organizations and public or private institutions operating within or serving the project area.
- B. To seek the assistance, where necessary, in implementing a Section 3 compliance plan.
- C. To maintain a list of all Section 3 area residents who have made application for employment either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To maintain and provide the information requested on the Section 3 Summary Report (HUD 60002) related to employment and training records of Section 3 residents.
- E. To include this Section 3 compliance in all bid documents and to require all bidders to submit a Section 3 compliance plan including utilization goals and the specific steps planned to accomplish these goals.
- F. In the case of a general contractor, to insure that all Section 3 business concerns within the project area are notified of pending sub-contractual opportunities.
- G. To require all subcontractors to complete the Contractor Compliance Form before awarding any contracts.
- H. To maintain records, including copies of correspondence, memoranda, etc., which documents all steps taken to recruit Section 3 residents and Section 3 subcontractors from within the project area.
- I. To provide the information requested on Contract Compliance Activity Report related to contractors and subcontractors Notified and selected and the number of women and minority employees, the number of vacant positions and the Positions filled with lower income project area residents.

As officers and representatives of \_\_\_\_\_

Name of Contractor/Subcontractor

We the undersigned, have read and fully agree to this Section 3 Compliance Plan, and become a party to the full implementation of this program.

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Section 3 Clause

All Section 3 covered contracts shall include the following Section 3 clause:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD Assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low – and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice of advising the labor organization or worker’s representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract Or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.
- F. Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

F. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7 (b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Section 3, Women, Minority Business Concern Questionnaire

Business Name

Business Contact Person

Address

Phone Number

1. Is your business a Section 3 Business Concern?  Yes  No
2. Is your business a Women-Owned business concern?  Yes  No  
2. (a) Please list any self-certifications, agency certifications, and/or program certifications your Business holds: \_\_\_\_\_
3. Is your business a Disadvantaged/Minority-owned business concern?  Yes  No

**What is a Section 3 business concern?** (Adapted from <http://www.hud.gov/offices/theo/section3/Section3.pdf>)

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provide evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or More of the dollar amount of the awarded contract.

**Who are Section 3 residents?**

(HUD Income Limits available online <http://hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/index.cfm>)

Section 3 residents are:

- Public housing residents or,
- Persons who live in the area where a HUD-assisted project is located and who have a household Income that falls below HUD's income limits

**Determining Income Levels**

- Low income is defined as 80% or below the median income of that area
- Very low income is defined as 50% or below the median income of that area

**How is a "woman-owned small business" defined?** (Adapted from <http://www.vwbc.org/documents/wobCERT.pdf>)

The Federal Acquisition Regulations (FAR) defines a "woman-owned small business concern" in Part 19.001 Definitions, as follows: "Woman-owned small business concern means a small business concern –(a) which is at least 51 percent owned by one or more women; or, in case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (b) whose management and daily business operations are controlled by one or more women."

**How is a "minority-owned business" defined?**

Although definitions vary, in general a minority-owned business is a for-profit enterprise, physically located in the United States or its trust territories, which is owned, operated, and controlled by minority group member(s). "Minority group members" most often identified are US Citizens who are Asian, African-American, Hispanic, and Native American (for a complete listing, see <http://www.sba.gov/library/cfrs/13cfr124.html>). Ownership by minority individuals means the business is at least 51 percent owned by such individuals, or, in case of a publicly-owned business, at least 51 percent of the stock is owned by one or more such individuals. Further, the management and daily operations are controlled by those minority group members.

Certification – The information above is true and complete to the best of my knowledge and belief.

Signature

Date

### Section 3 Plan Certification

\_\_\_\_\_ agrees to implement the following specific affirmative action  
(Name of Contractor)  
directed at increasing the utilization of lowest income residents and businesses within the City of  
Warwick.

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and were advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City of Warwick the necessary number of lower income residents through; Local advertising media, sign placed at the proposed site for the project, and community organizations and public private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on a referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 plan in all bid documents, and to require all bidders and subcontractors to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To insure the subcontracts which are typically let on a negotiated rather than bid basis in area other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To insure that all appropriated project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

As officers and representatives of \_\_\_\_\_ we, the undersigned,  
(Name of Contractor)  
have read and  
fully agree to this Affirmative Action Plan, and become party to the full implementation of this  
program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED  
FACILITIES**

---

Name of Prime Contractor

---

Project Name & Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract.
2. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).
3. No segregated facilities will be maintained.

---

Name & Title of Signer (Print or Type):

---

Signature Date

**Section 3 Summary Report**  
Economic Opportunities for  
Low – and Very Low-Income Persons

U.S. Department of Housing  
and Urban Development  
Office of Fair Housing  
And Equal Opportunity

OMB Approval No: 2529-0043  
(exp. 11/30/2010)

HUD Field Office:

Section back of page for Public Reporting Burden statement

1. Recipient Name & Address: (street, city, state, zip)	2. Federal Identification: (grant no.)	3. Total Amount of Award:
	4. Contact Person	5. Phone: (Include area code)
	6. Length of Grant:	7. Reporting Period:
8. Date Report Submitted:	9. Program Code: (Use separate sheet for each program code)	10. Program Name:

**Part I: Employment and Training (\*\* Columns B, C and F are mandatory fields. Include New Hires in E & F)**

A Job Category	B Number of New Hires	C Number of New Hires that are Sec. 3 Residents	D % of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents	E % of Total Staff Hours for Section 3 Employees and Trainees	F Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade (List					
Trade					
Trade					
Trade					
Trade					
Other (List)					
Total					

- \* Program Codes  
1 = Flexible Subsidy  
2 = Section 202/811
- 3 = Public/Indian Housing  
A = Development  
B = Operation  
C = Modernization
- 4 = Homeless Assistance  
5 = HOME  
6 = HOME State Administered  
7 = CDBG Entitlement
- 8 = CDBG State Administered  
9 = Other CD Programs  
10 = Other Housing Programs

**Part II: Contracts Awarded**

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction contracts	

**Part III: Summary**

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

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.



Form HUD-60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.

**Instructions:** This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any *public and Indian housing programs* that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to recipients of housing and community development assistance in excess of \$200,000 expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to *contracts and subcontracts in excess of \$100,000* awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to *employment and training*. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to *contracting*, and Part III summarizes recipients' efforts to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.\* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. *Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.*

HUD Field Office: Enter the Field Office name .

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

**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: (Mandatory Field)** Enter the number of new hires for each category of workers identified in Column A in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column C: (Mandatory Field)** Enter the number of Section 3 new hires for each category of workers identified in Column A in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column D:** Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

**Column E:** Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

**Column F: (Mandatory Field)** Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self -explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

\* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. *Low-income persons* mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. *Very low-income persons* mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

City of Warwick  
Community Development Program

Affirmative Action Plan  
for  
Utilizing Local Businesses

This plan sets forth the procedures by which the City of Warwick will assure that to the greatest extent feasible contracts for work in connection with the City's Community Development Program will be awarded to business concerns which are located in or owned in substantial part by persons residing in the City of Warwick. These procedures are set forth in compliance with the rules and regulations in Part 135 of Title 24 of the Code of Federal Regulations entitled "Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects" published on August 3, 1973. It is the intent of this plan that the City and its contractors follow these procedures in awarding any work financed under the City's Community Development Program.

1. At the beginning of each Community Development Program Year the City will prepare and make available to the public a list of contracts expected to be awarded and a description of the professional category or classification of each type of service or supplied to be provided in order to carry out the Community Development Program.
2. The City will prepare a list of businesses known to be located within the City which appear to be eligible to provide the services, supplies or construction work in order to determine the availability of local businesses for each contract listed in compliance with No. 1 above.
3. The City and its contractors shall, where feasible, award all contracts to local businesses. Reasons for awarding contracts to other firms shall be documented. Sufficient reason for awarding contracts to firms outside the City shall include non-competitive bids or the unavailability of local firms or individuals who can provide the services or supplies required.
4. The City and its contractors shall comply with the following procedures in order to assure that local businesses are afforded the opportunity to contract with the City or other contractors under the Community Development Program:
  - (a) The Community Development Program's Affirmative Action Plan for Utilizing Local Businesses shall be inserted into all bid documents for work funded under the Community Development Program.
  - (b) Local businesses for the purpose of complying with these procedures shall be those located within the entire City of Warwick or owned in substantial part by residents of Warwick.
  - (c) All contractors and subcontractors shall certify their intent to comply with the objectives and procedures of this plan prior to signing a contract with the City. All contracts and subcontracts will be awarded in compliance with this plan and must be approved by the City of Warwick in writing.

(d) Opportunities or contracts under the Community Development Program shall be advertised in the metropolitan and local newspapers. A notice of the pending contract shall be posted on the site, where applicable, or in the City Hall. Notification of pending contractual opportunities shall be sent to the City's Purchasing Agent.

(e) All contracts for more than \$1,000 shall be awarded on the basis of competitive bids in conformance with City and Federal procedures.

(f) All bids or proposals must be accompanied by a list of all positions for employment or training by occupational category and a list of all subcontracts necessary to fulfill the contract. In addition, each bidder shall submit with the bid, a certification adopting this plan for utilizing local businesses.

I, \_\_\_\_\_, certify that I have  
(Contractor)

read and understand the Community Development Program's Affirmative Action Plan for Utilizing Local Businesses and further certify that all work let out under this contract shall be in conformance with its objectives and procedures. I understand that I am certifying that to the greatest extent feasible all sub-contracts or other work let out under this contract will be awarded to businesses located in Warwick or businesses which are owned in substantial part by residents of Warwick.

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
(Contractor)

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

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

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

Affirmative Action Requirements  
for  
Rhode Island

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity  
(Executive Order 11246)

1. The Officer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed percentage terms for the contractor's work force in each trade on all construction work in the covered area are as follows:

Female: 4-1-78 to 3-31-79 3.1%  
4-1-79 to 3-31-80 5.0%  
4-1-80 to 3-31-81 6.9%

Minorities: ALL TRADES      3.0%

These goals are applicable to all contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR-4.3(a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any other construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is:

Female: Nation-wide

Minorities: State-wide

The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

AFFIRMATIVE ACTION STEPS TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working as such sites or in such facilities.
2. Establish and maintain a current list of minority and female recruitment sources provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.
3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunity and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Step #2.

6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc. by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction is performed.

7. Review, at least annually the company's EEO policy and affirmative obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these terms with on-site supervisory personnel such as Superintendents, General foremen, etc. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's and Subcontractors with whom the Contractor does or anticipate doing business.

9. Direct its recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

11. Validate all test and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.

13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

14. Ensure that all facilities and company activities are non-segregated except that separate or single-user and necessary changing facilities shall be provided to assure privacy between the sexes.

15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers including circulation of solicitations to minority and female contractor associations.

16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

Standard Federal Equal Employment  
Opportunity Construction Specifications

(Executive Order 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted

b. "Director" means director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

c. "Employer Identification Number" means the Federal Social Security number used on the Employers Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes: Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race; Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands) and American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portions of the work involving any construction trade it shall physically include in each subcontracts in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. the goals set forth in the solicitation from which



this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunity. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the follows:

- a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual.

If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or women sent by the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunity and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the source complied under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc. by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these terms with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, thorough appropriate training, etc. such opportunities.
- m. Ensure that seniority practices, job classification, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female contractors and suppliers including circulation of solicitations to minority and female contractor associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and a participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may also be in violation of the Executive Order if a specific minority group of women is under-utilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

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

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications shall implement affirmative action steps at least as extensive as those standards prescribed in paragraph 7 of these specifications so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4-3.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out to the provisions hereof as may be required by the Government and to keep records which shall at least include for each employee the name, address, telephone numbers, contraction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status, i.e. mechanic, apprentice, trainee, helper or laborer, dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**MINORITY CONTRACTOR PARTICIPATION**

Name of Prime Bidder

Indicate whether or not you will be subcontracting a portion of this contract to a minority business \_\_\_Yes \_\_\_No

If yes, list the names of minority subcontractors who will be performing work for you.

Type of Work (Electrical, Paving, etc.) and Name of Contract items

Minority Contractor	Address	Parts thereof to be performed	Agreed Price

NOTE: Minority person means an individual who is Black, Hispanic, Asian American, American Indian, Alaskan Native or a woman regardless of race or ethnicity.

Minority contractor means a contractor which is:  
1) an individual, who is a Minority Person, 2) a partnership or joint venture controlled by minority persons and in which at least 51 percent of the beneficial ownership interests are held by minority persons, or 3) a corporation or other entity controlled by Minority Persons in which at least 51 percent of voting interest and beneficial ownership interests are held by Minority Persons.

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

**II. NONDISCRIMINATION**

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

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

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

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

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

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

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

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **Training and Promotion:**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

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

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

## 2. Withholding

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

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

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

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

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

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

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

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

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

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

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

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

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

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

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

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

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

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

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

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

## VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

##### **1. Instructions for Certification – First Tier Participants:**

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

.....

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

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

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

## 2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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



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

\*\*\*\*\*

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

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

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

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## **Civil Rights, Employment and Contracting Opportunities, and Other Federal Requirements**

**Americans with Disabilities Act of 1990 (ADA):** This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

**Architectural Barriers Act of 1968 (ABA) - (42 U.S.C. 4151-4157):** This Act requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards.

**Disadvantaged Business Enterprises (DBE):** It is the policy of HUD to encourage the award of prime contracts valued at \$100,000 or more to small disadvantaged business (SDB) concerns (other than certified 8(a) firms) that are at least 51 percent owned and controlled by socially and economically disadvantaged individuals.

**Fair Labor Standards Act (FLSA) [as amended] - 29 U.S.C. 201 et seq.:** The U.S. Department of Labor (DOL) administers and enforces the minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

**Immigration Reform and Control Act (IRCA) of 1986:** Employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).

**Minority and Women-Owned Business Enterprises (MBE/WBE) - 24CFR Part 85.36 (e) (1):** It is the policy of HUD to actively encourage contractors to take all necessary affirmative steps to assure that small and minority firms, Women’s business enterprise and labor surplus area firms as used as subcontractors when possible. A minority or women-owned small business concern is defined as owned by at least 51 percent minority group members or women.

**Section 109 of Title 1 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et. seq., particularly 42 U.S.C. 6101 et. seq., and 29 U.S.C. 794):** This section provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the

basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

**Section 504 of the Rehabilitation Act of 1973, as amended (implemented at 24 CFR Part 135):** It is unlawful to discriminate based on disability in federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

**Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotions, transfer, demotions, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.

**Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

**Violation or Breach of Contract:** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**Termination for Cause and for Convenience:** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**Rights to Inventions Made Under a Contract or Agreement:** If the agreement with the contractor is for the performance of experimental, developmental, or research work, including any assignment, substitution of parties, or subcontract of any type entered into for such purpose, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended:** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to

comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Procurement of Recovered Materials:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**HUD Lead-Based Paint Regulations, 24 CFR Part 35**

**Flood Disaster Protection Act of 1973 (P.L. 93-243)**

**Nondiscrimination under Title VI of the Civil Rights Act of 1964 (as Amended)**

**Acknowledgment of Bidding Firm to comply with the above referenced Federal Regulations where applicable:**

\_\_\_\_\_  
Print Name: (Contractor)

\_\_\_\_\_  
Date

**CITY OF WARWICK**

**PROPOSAL AND CONTRACT FORM**

**TITLE OF SPECIFICATION: RFP2021-295 Engineering and Survey Support Services for Improvements to Oakland Beach Playground and Splash Pad**

**I. PROPOSAL:**

WHEREAS, the CITY OF WARWICK has duly asked for proposals for performance of services and/or supply of goods in accordance with the above-indicated specifications.

The person or entity does irrevocably offer to perform the services and/or furnish the goods in accordance with the specifications, which are hereby incorporated by reference in exchange for the proposal price.

This offer will remain open and irrevocable until the CITY OF WARWICK has accepted this proposal or another proposal on the specifications or abandoned the project.

The bidder agrees that acceptance by the CITY OF WARWICK will transform the proposal into a contract. This proposal and contract will be secured by Bonds, if required by the specifications.

## **Appendix A**

### ***Survey Specifications and Conceptual Master Plan***

The conceptual plans and related cost estimates contained herein were developed by the City of Warwick for general project planning and grant purposes. While these plans generally reflect design elements to be provided for the project, we anticipate that the plans will be refined based on community input, regulatory requirements, and other related factors. Past survey plans included herein are provided for reference only.

## **Survey Specifications – Oakland Beach Splash Pad and Play Area**

The selected consultant shall provide a Class I and Class III survey of the existing playground and surrounding areas in the Oakland Beach section of Warwick, RI as shown in Figure 1. The survey area is located within AP 375/ Lot 562 and AP 376/ Lot 549 in the vicinity of the existing beach and playground. The intent of the survey is to verify the property lines along the northwest side of the site adjacent to Iggy’s Doughboy and Chowderhouse, and serve as a base plan for future site improvements to include the repair or replacement of the existing playground structure, addition of a splash pad, and other public open space improvements. Please note that only the property line adjacent to the Iggy’s site is required as shown in figure I. A Class I survey is only required for certain areas of the property as shown on figure 1, but is not required for the entire City parcel. In general survey services shall include:

- Class I survey of the northwest property line abutting Iggy’s Doughboys and Chowderhouse as shown in Figure 1. The property boundary shall be surveyed, marked in the field, and shown on the plan.
- Class I survey of the property lines to the south east of the Top of the Bay Restaurant parking area as shown in Figure 1. The property boundary shall be surveyed, marked in the field, and shown on the plan.
- Installation of five (5) granite bound markers at the corners of the property lines as shown in Figure 1. Granite bounds shall measure minimum 4”X4”X 30”.
- Location of all major site fixtures and elements to include:
  - The existing play structure.
  - The existing boardwalk.
  - The pedestrian plaza area along Oakland Beach Avenue.
  - Pavement edges, curb lines, guardrails, fences, and other elements to the center line of Oakland Beach Avenue.
  - The perimeter of major planting areas.
  - Trees within the survey area greater than 4” in caliper.
- Identification of topographic shifts in grade through the use of contours, spot elevations, and other notations. The following shall be included on the plan:
  - 1’ contours within the designated survey area.
  - Spot elevations at the corners of buildings, top and bottom of stairs, sills, walls, ramps, slopes above 3:1 and other major shifts in grade.
- Location of drain structures and underground utilities that can be identified through visual investigation, as-built drawings, dig safe markings, etc. The City will provide the selected consultant with available as built plans of the site for use in compiling utility information.
- Pipe invert elevations for any underground structures within the survey area.
- A bar scale, north arrow, and relative notes on all survey sheets. The final survey sheet shall be no larger than 30”X42” in size. 24”X36” is preferred.
- Stamp of a surveyor licensed and registered in the State of Rhode Island.

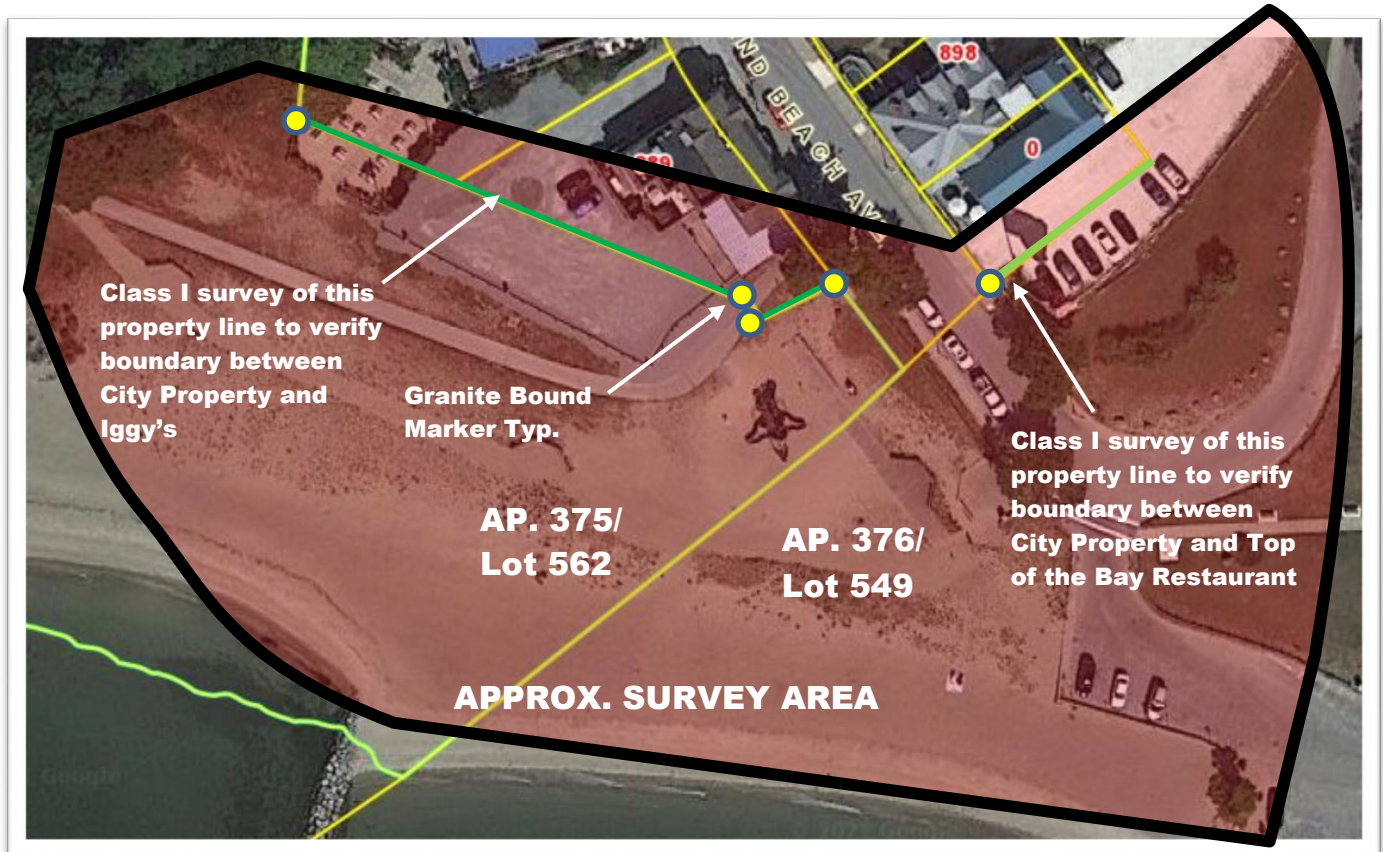


## Deliverables

- Electronic PDF file of the draft survey for review and comment by the City prior to completing the final survey plan.
- One 24"X36" or 30" X 42" mylar print of the stamped final survey plan.
- Provide all CAD files and PDF electronic print of the final survey to the City upon completion.

### Figure 1 – Oakland Beach Survey Area

AP 375/ Lot 562 and AP 376/ Lot 549 in the vicinity of the existing playground





# OAKLAND BEACH



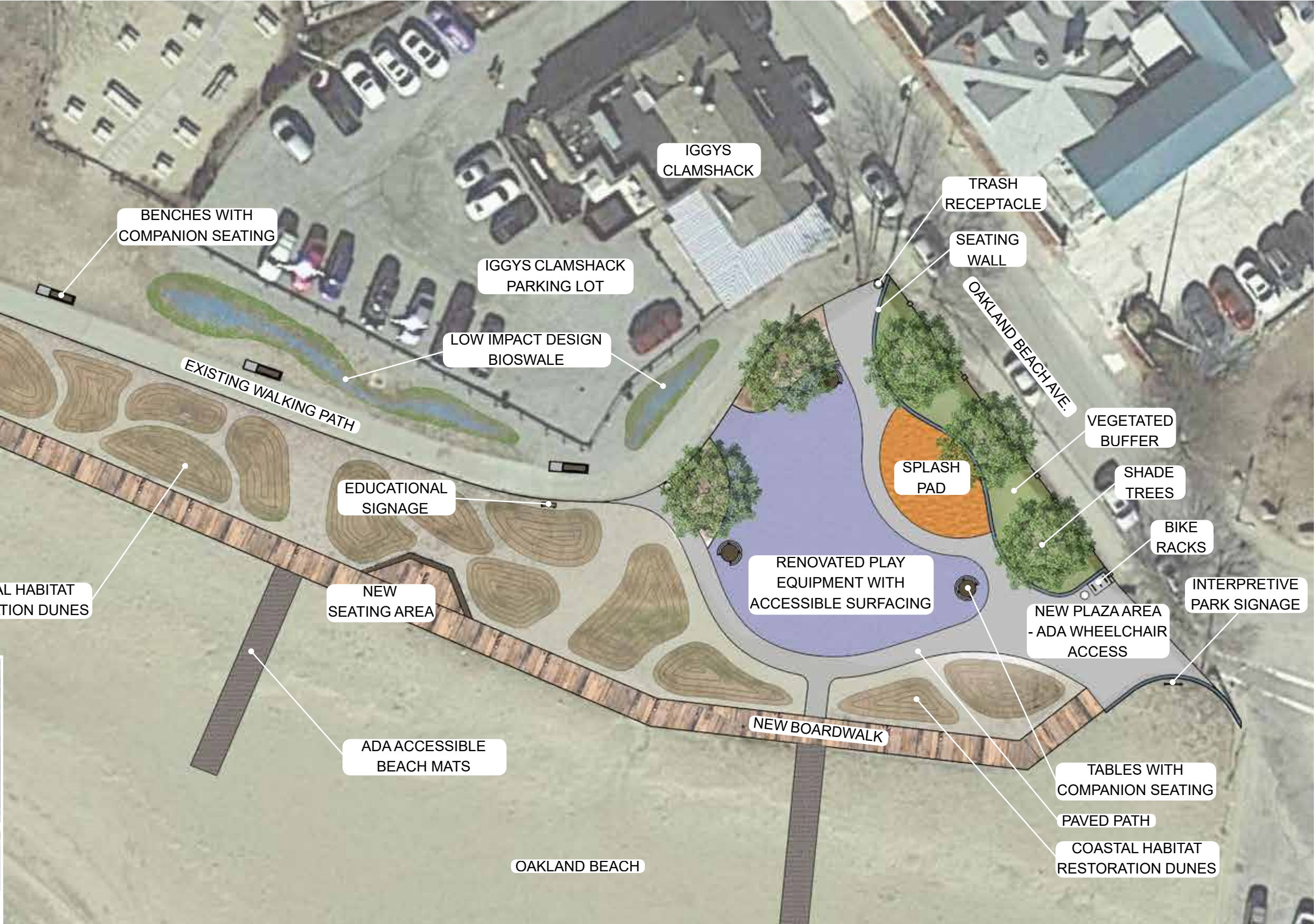
COASTAL HABITAT RESTORATION DUNES



LOW IMPACT DESIGN BIOSWALE



SPLASH PAD



# Multi-Functional Design Concepts for Coastal Stormwater Management

Design Consideration: Plan for potential flooding, incorporating rising seas with a design life anticipating 1' sea level rise

## The Place: Oakland Beach, Warwick RI

Oakland Beach is a bay inlet beach and is an important historical, recreational, and economic hub in Warwick, Rhode Island. Popular for saltwater swimming and fishing, this public beach is a destination with neighboring attractions such as restaurants and a boat access ramp.



## The Problem: Water Quality and Beach Closures

Oakland Beach has impaired water quality and is vulnerable to sea level rise, nuisance flooding, and storm surge. Surface flow from the urban landscape upland of Oakland Beach and coastal flooding contribute to stormwater and water quality problems, resulting in frequent beach closures and raising health, safety, and economic concerns.

## The Solution: Green Infrastructure/Multi-functional Stormwater Management

- Green Infrastructure is a nature-based adaptation tool for:
  - Stormwater filtration and infiltration
  - Addressing shoreline erosion and supplementing existing grey infrastructure
  - Restoration and enhancement of habitats
- Uses designed or engineered systems that allow soil and vegetation to capture water where it falls
- Aims to preserve natural hydrology of watershed
- Reduces stress on and need for traditional "grey" or "hard" design solutions
- Is applied and adaptable at different scales

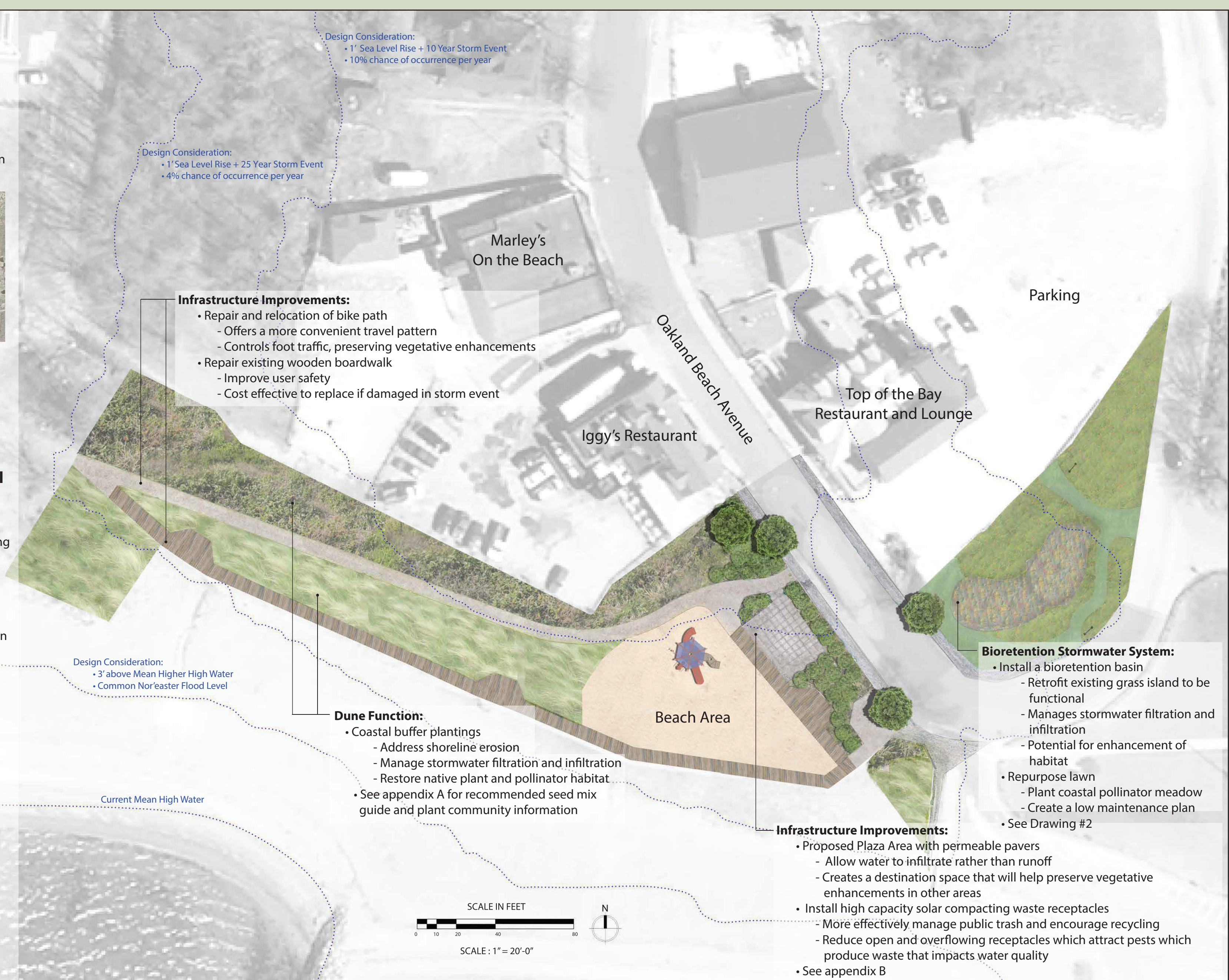
## Opportunities and Benefits: Community

Implementing elements of nature-based solutions with engineered solutions on Oakland Beach will:

- Decrease beach closures from pollution
- Reduce and manage storm water flooding
- Provide habitat for native plant communities and pollinators
- Create opportunities for public education and awareness
- Enhance aesthetics of the area
- Increase public health and safety
- Recognize, support, and enhance historic uses

## Opportunities and Benefits: Municipal

- Cost effective and practical solutions
- Preservation of important habitat and natural areas
- Less contaminants into coastal waters & shellfish habitats
- Reduce pressure on aging grey infrastructure
- Create health and social benefits
- Support for jobs, local business hubs, and economic vitality
- More efficient maintenance requirements

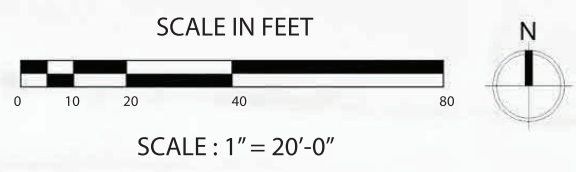


- Infrastructure Improvements:**
- Repair and relocation of bike path
    - Offers a more convenient travel pattern
    - Controls foot traffic, preserving vegetative enhancements
  - Repair existing wooden boardwalk
    - Improve user safety
    - Cost effective to replace if damaged in storm event

- Dune Function:**
- Coastal buffer plantings
    - Address shoreline erosion
    - Manage stormwater filtration and infiltration
    - Restore native plant and pollinator habitat
  - See appendix A for recommended seed mix guide and plant community information

- Bioretention Stormwater System:**
- Install a bioretention basin
    - Retrofit existing grass island to be functional
    - Manages stormwater filtration and infiltration
    - Potential for enhancement of habitat
  - Repurpose lawn
    - Plant coastal pollinator meadow
    - Create a low maintenance plan
  - See Drawing #2

- Infrastructure Improvements:**
- Proposed Plaza Area with permeable pavers
    - Allow water to infiltrate rather than runoff
    - Creates a destination space that will help preserve vegetative enhancements in other areas
  - Install high capacity solar compacting waste receptacles
    - More effectively manage public trash and encourage recycling
    - Reduce open and overflowing receptacles which attract pests which produce waste that impacts water quality
  - See appendix B



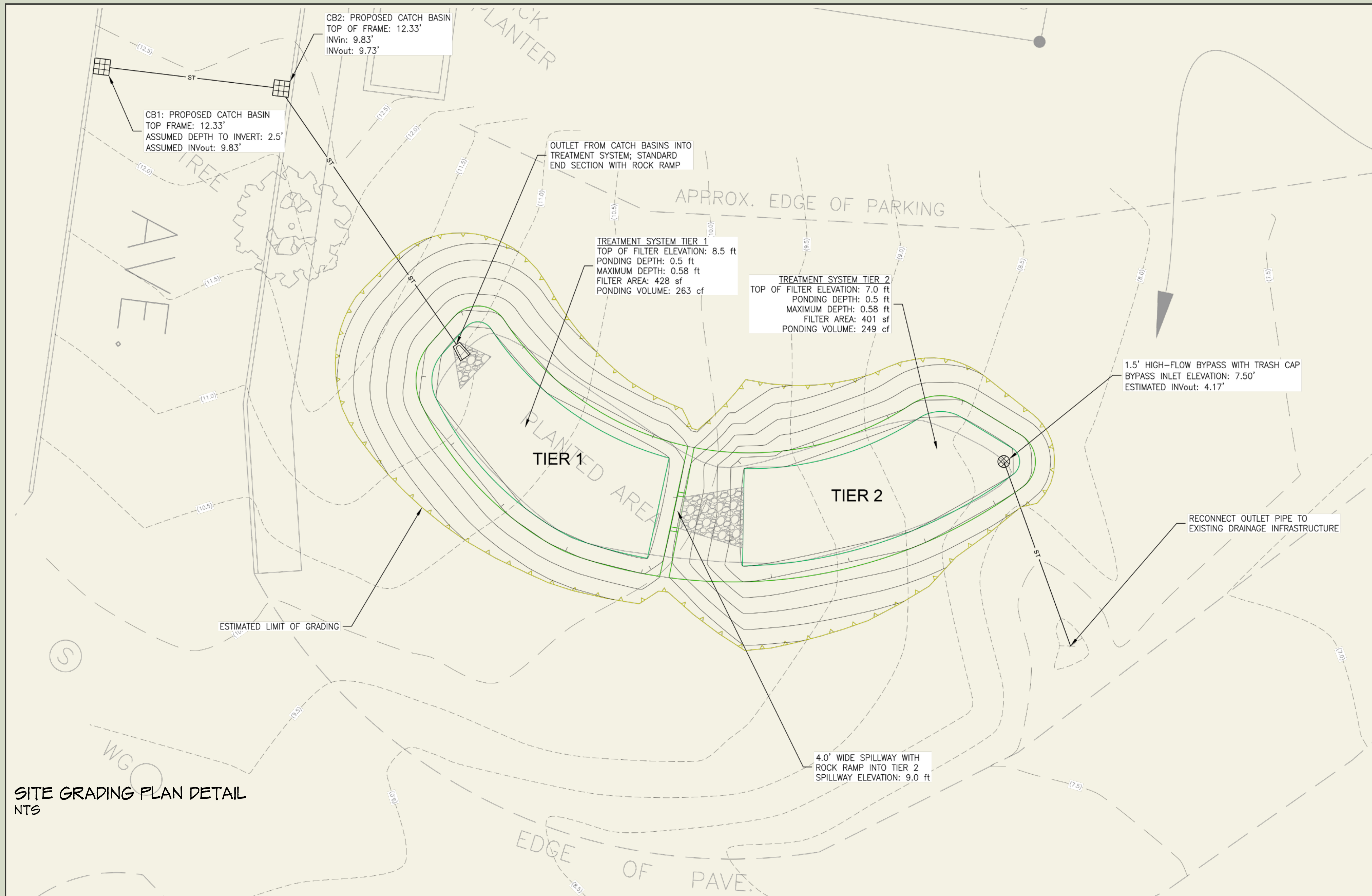
# Green and Resilient Infrastructure Planning (GRIP): Get a GRIP on RI's Coastline

Funding for this project is provided by the Department of the Interior through a grant from the National Fish and Wildlife Foundation's Hurricane Sandy Coastal Resiliency Competitive Grant Program



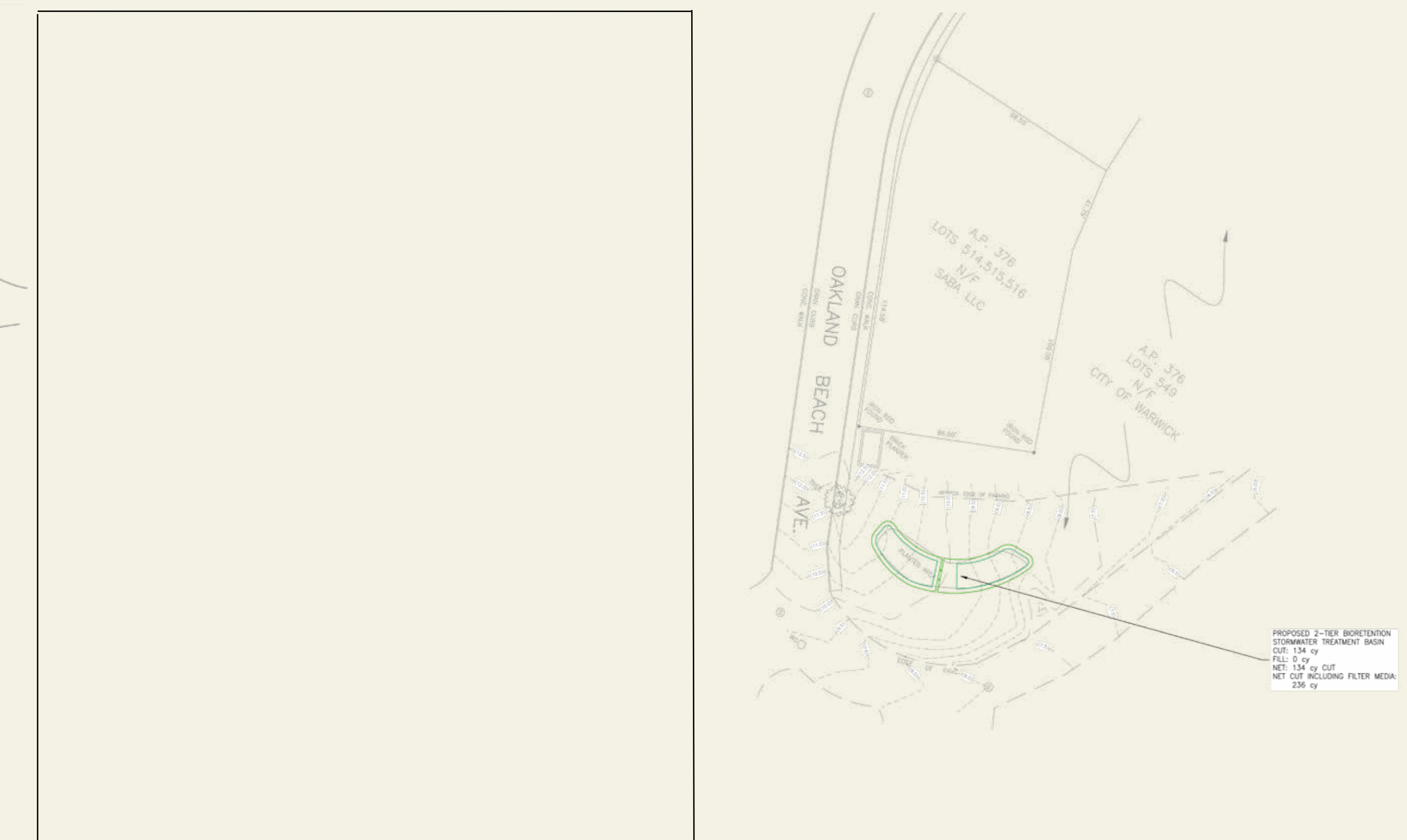
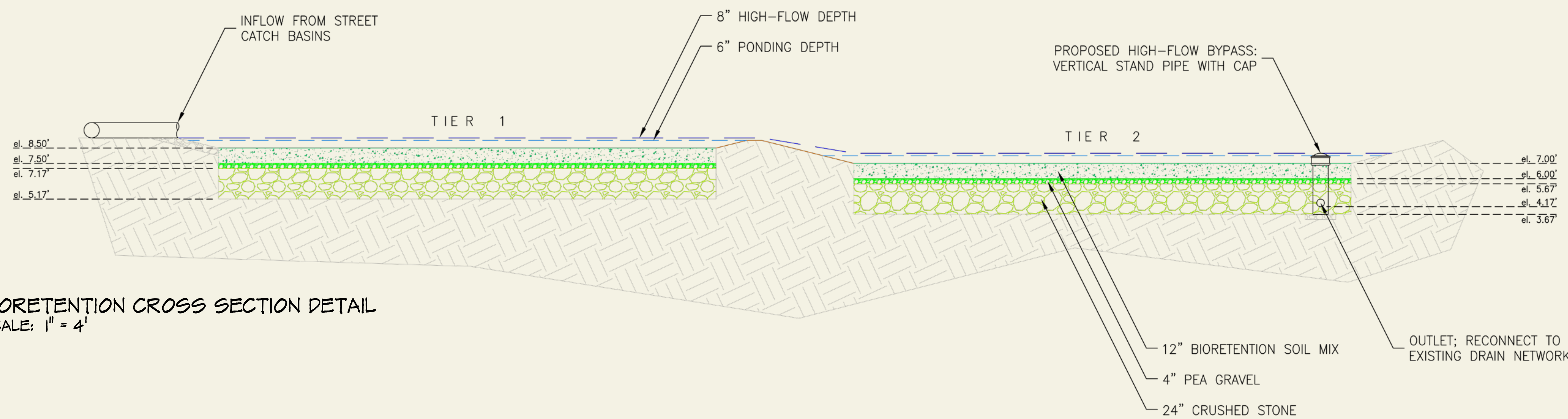
# OAKLAND BEACH - CONCEPTUAL MASTER PLAN (DRAFT) WARWICK, RHODE ISLAND

## GREEN AND RESILIENT INFRASTRUCTURE PLANNING



SITE GRADING PLAN DETAIL NTS

BIORETENTION CROSS SECTION DETAIL SCALE: 1" = 4'



BIORETENTION SIZING DIAGRAM

WARWICK RAIN GARDEN DRAINAGE AREA



Bioretention Sizing Worksheet				
Water Quality Volume				MA Sizing
Drainage Area (ft <sup>2</sup> )	64,947			64,947
% IC	98%			
Impervious Area (ft <sup>2</sup> )	64,947	gallons		64,947
WQV (ft <sup>3</sup> )	5044		37,731	5412 40,484
<b>Static Sizing - Bioretention</b>				
	cell 1	cell 2	total	
dimensions	ft <sup>2</sup>	428	401	829
Storage Volume (ft <sup>3</sup> )	5044	freeboard (ft)	ft <sup>3</sup>	ft <sup>3</sup>
Basin Volume (ft <sup>3</sup> )	0.5	0.17	263	249
Filter Area (ft <sup>2</sup> )	829	9.99		512
BSM	1	0.2		166
Reservoir	2.33	0.4		773
System Storage (ft <sup>3</sup> )				1450

Drainage Area	Area (Sq Ft)	Area (Acres)
Oakland Beach-BIO	64,947.00	1.49
Weighted 'C'	C'	Area x C
Commercial 2-6% slope poor soils (HSG A)	0.71	1.06
Time of Concentration (min)	14.4	
<b>Q = CIA</b>		
<b>Outfall</b>		
I <sub>15</sub> = in/hr (15 min TOC)	3.96	
I <sub>30</sub> = in/hr (30 min TOC)	4.76	
Q <sub>15</sub> (cfs)	4.19	
Q <sub>30</sub> (cfs)	5.04	
<b>Manning's Formula</b>		
Q = 1.486/n * AR <sup>2/3</sup> S <sup>1/2</sup>		
Manning's n	0.009	HDPE Pipe
Slope (S)	1%	
<b>Flow at pipe full</b>		
Pipe dia (ft)	Q (cfs)	Planned/Existing Conditions
0.5	0.81	FAIL FAIL
0.7	1.77	FAIL FAIL
0.8	3.16	FAIL FAIL
1.0	5.14	PASS PASS
1.3	9.33	PASS PASS
1.5	15.17	PASS PASS
2.0	32.66	PASS PASS



# MAYOR PICOZZI'S OAKLAND BEACH ENHANCEMENT INITIATIVE



- CARRIES THE EXISTING PLAY STRUCTURE'S NAUTICAL-THEME INTO THE SPLASH PAD AREA, CREATING A COHESIVE PLAY SPACE.
- THE PERGOLA TYPE WATER FEATURE WITH INTEGRATED COMPASS, OVERHEAD TREASURE BUCKET AND WATER SPRAYS ALLOWS CHILDREN AND ADULTS TO COOL OFF AND ENJOY THE SUMMER MONTHS.
- INTRODUCES A COASTAL-THEMED TREASURE HUNT WITHIN THE ENTIRE PLAY AREA FOR EXPANDED LEARNING AND CREATIVITY.



- WATER FEATURE CONVERTS INTO A SHADE SHELTER OFFERING AN AREA FOR TABLES AND CHAIRS, ALLOWING VISITORS AND RESIDENTS TO ENJOY A LOCAL BITE TO EAT IN AN OPEN PUBLIC SPACE.
- PERGOLA CONTAINS IDENTIFICATION SIGNAGE THAT PROVIDES PLACE MAKING FOR OAKLAND BEACH.
- ACCENT LIGHTING WILL HIGHLIGHT ARCHITECTURAL FEATURES OF THE STRUCTURE WHILE PROVIDING PEDESTRIAN SAFETY.



*SPLASH PAD*





# MAYOR PICOZZI'S OAKLAND BEACH ENHANCEMENT INITIATIVE

## Bird's Eye View of Proposed Concept



Existing Conditions

- LEGEND:**
- A - Interpretive Park Signage
  - B - Bike Racks and Trash Recepticals
  - C - Vegetated Buffer with Shade Trees
  - D - Seating Wall
  - E - Splash Pad
  - F - Renovated Play Equipment
  - G - Accessible Safety Surfacing
  - H - Tables with Companion Seats
  - I - Coastal Habitat Restoration
  - J - New Boardwalk
  - K - ADA Accessible Beach Mats
  - L - Educational Signage
  - M - Low Impact Design Bioswales
  - N - Existing Walking Path

### Process:



\*Portions of the renovated Boardwalk are anticipated to be complete by spring 2021.

### Funding:

- RI Department of Environmental Management Green Space Grant Program = \$400K
- U.S. Housing & Urban Development Community Development Block Grant Program = \$196K
- Total Project Allocation = \$596K**

