



City Council Staff Report

DATE: December 16, 2015 CONSENT CALENDAR

SUBJECT: AWARD A CONSTRUCTION CONTRACT TO MATICH CORPORATION, A CALIFORNIA CORPORATION, IN THE AMOUNT OF \$754,385 FOR THE RAMON ROAD PAVEMENT REHABILITATION, CITY PROJECT NO 14-02, FEDERAL AID PROJECT NO. STPLN-5282 (043)

FROM: David H. Ready, City Manager

BY: Public Works & Engineering Department

SUMMARY

Award of this contract will allow the City to proceed with construction of the Ramon Road Pavement Rehabilitation, City Project No. 14-02, Federal Aid Project No. STPLN-5282 (043) (the "Project").

RECOMMENDATION:

1. Reject the lowest bid received from R-JS General Construction, a California corporation, as non-responsive;
2. Waive any informality (non-responsiveness), and award a construction contract (Agreement No. ____) to Match Corporation, a California corporation, in the amount of \$754,385 for the Ramon Road Pavement Rehabilitation, City Project No. 14-02, Federal Aid Project No. STPLN-5282 (043);
3. Authorize the City Manager to approve and execute construction contract change orders up to an additional amount of \$75,000; and
4. Authorize the City Manager to execute all necessary documents.

BACKGROUND:

In early 2013, the Riverside County Transportation Commission (RCTC) approved a Call for Projects for RCTC and its member jurisdictions using RCTC's allocation of Moving Ahead for Progress in the 21st Century (MAP-21) funds made available through the current federal transportation bill, the Surface Transportation Program (STP).

On March 28, 2013, the Public Works and Engineering Department responded to RCTC's Call or Projects for MAP-21 funding, requesting consideration of funding for pavement rehabilitation and associated improvements on Ramon Road extending generally from Sunrise Way to El Cielo Road. The purpose of the City's request is to repair a severely weathered heavily traveled major arterial roadway. The proposed improvements would grind and overlay the existing asphalt concrete pavement and related improvements. The Public Works Department requested \$395,729 in STP federal funds for an estimated \$500,000 project.

RCTC received a number of requests for MAP-21 funding from its member jurisdictions, requesting a total of \$52,000,000 in funding available in Fiscal Year's 2013/14 through 2015/16. The requests were evaluated by a Review Panel, and the City's request was ranked in 13th place of the 23 requests that were approved. The RCTC Executive Committee subsequently approved the list of projects to receive STP funding, and the projects were later added to the Regional Transportation Improvement Plan.

The Project will cold mill the existing asphalt concrete pavement, prepare and repair existing cracks, construct asphalt concrete overlay, install inductive loop vehicle detectors, and remove, reconstruct, and upgrade curb ramps to conform to current ADA standards throughout the Project limits. A location map is provided below. A vicinity map illustrating a 500-ft radius from the roadway segment is included as **Attachment 1**.



Location Map

The City operates under a "Master Agreement" with the state of California, through its Department of Transportation (Caltrans), identified as the "Administering Agency – State Agreement No. 08-5282" for use of federal funds on City projects. Under the terms of the Master Agreement, the City is required to comply with certain state and federal requirements, including pre-approval and authorization to proceed with construction prior to bidding a project. Staff has successfully coordinated with Caltrans to obtain authorization to proceed with construction of the Project; a copy of the Caltrans authorization letter is included as **Attachment 2**.

On October 7, 2015, the City Council authorized staff to advertise and solicit bids for the Project. Subsequently, on November 12, 2015, the Procurement and Contracting Division received five (5) construction bids from the following contractors:

Company	Location	Bid Amount
R-JS General Construction *** *** <i>non-responsive</i>	Riverside, CA	\$616,430
Matich Corporation	San Bernardino, CA	\$754,385
Hardy & Harper, Inc.	Santa Ana, CA	\$777,000
All American Asphalt	Corona, CA	\$806,840
Granite Construction Company	Indio, CA	\$836,520

The engineer's estimate was \$500,000. However, additional curb ramp replacements to comply with ADA regulations were added to the scope of the Project prior to bidding which increased the overall cost of the Project. A full bid summary is included as **Attachment 3**.

Bid Analysis

As part of the City's normal bid review process, staff reviewed all of the bid documents submitted by the apparent low bidder, R-JS General Construction, (R-JS), to ensure compliance with the Instructions to Bidders, as well as compliance with certain federal requirements, including Disadvantaged Business Enterprise (DBE) commitments. After staff's review, staff determined that R-JS submitted an incomplete bid by failing to include the federally-required Non-Lobbying Certification with the bid submittal. Additionally, R-JS did not include a commitment to meet the DBE contract goal of 5%, listing no DBE certified subcontractors, and failed to document adequate good faith efforts to solicit DBE-certified subcontractors as part of its bid¹.

Staff reviewed the bid documents submitted by the second low bidder, Matich Corporation, and determined that its bid was compliant with the Instructions to Bidders. Although the Matich Corporation bid does not include a commitment to meet the DBE contract goal of 5%, listing no DBE certified subcontractors, staff determined that Matich Corporation identified sufficient good faith efforts to solicit DBE certified firms for the Project by placing multiple advertisements in various trade publications, and sending requests for bids directly to approximately 30 various subcontractors, including follow-up efforts.

¹ R-JS's good faith efforts were limited to direct phone calls made to 3 DBE firms, no other good faith efforts were made, such as advertising and publications soliciting proposals from the broader DBE community of contractors, or any evidence of follow-up efforts to solicit proposals from DBE firms.

On all advertisements for bids, the City issues a disclosure under Section N-3 "Award of Contract," in its Notice Inviting Bids declaring that:

The City reserves the right after opening bids to reject any or all bids, to waive any informality (non-responsiveness) in a bid, or to make award to the lowest responsive, responsive bidder, and reject all other bids, as it may best serve the interest of the City.

As a California charter city, pursuant to relevant state and case law, the City Council retains general authority to award contracts in the best interests of the City. On the basis that the City Council rejects the lowest bid submitted by R-JS General Construction as non-responsive, staff recommends that the City Council waive any informality (non-responsiveness) in the bid submitted by Match Corporation, and determine that Match Corporation of San Bernardino, California, submitted the lowest responsive bid.

Public Works Contractor Registration Law (SB 854)

Under California Labor Code Section 1771.1, as amended by Senate Bill (SB) 854 (2014), unless registered with the State of California Department of Industrial Relations (DIR), a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public works projects on or after March 1, 2015. Similarly, a public entity cannot award a public works contract to a non-registered contractor, effective April 1, 2015. Staff has reviewed the DIR's contractor registration database, and has confirmed that Match Corporation, and the listed subcontractors, are registered with the DIR, and are appropriately licensed.

Match Corporation, of San Bernardino, California, submitted the lowest responsive bid; staff reviewed the bid and contractor's license, and found Match Corporation to be properly licensed and qualified. A construction contract with Match Corporation is included as **Attachment 4**.

Local Business Preference Compliance

Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program," requires prime contractors to use good faith efforts to sub-contract the supply of materials and equipment to local business enterprises and to sub-contract services to businesses whose work force resides within the Coachella Valley; submission of a good faith efforts is required. However, Section 7.09.030 does not apply to projects that receive state or federal funding which preclude the application of local preferences.

ENVIRONMENTAL IMPACT:

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act (CEQA). The Guidelines are required to include a list of classes of projects which have been determined not to have

a significant effect on the environment and which are exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources identified classes of projects that do not have a significant effect on the environment, and are declared to be categorically exempt from the requirement for the preparation of environmental documents. In accordance with Section 15301 "Existing Facilities," Class 1 projects consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public structures, facilities, mechanical equipment or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Therefore, in accordance with Section 15301(c), staff has determined that the Ramon Road Pavement Rehabilitation Project, City Project No. 14-02, Federal Project No. STPLN-5282 (043) is considered categorically exempt from CEQA and a Notice of Exemption has been prepared and filed with the Riverside County Clerk. A copy of the Notice of Exemption is included as **Attachment 5**.

On December 11, 2014, Caltrans, acting as the lead agency pursuant to the National Environmental Policy Act (NEPA), made an environmental determination that the Project does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and has considered unusual circumstances pursuant to 23 CFR 771.117(b). On the basis of this determination under federal delegation pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding (MOU) dated June 7, 2013, executed between the Federal Highway Administration (FHWA) and the state of California, Caltrans has determined that the Project qualifies for a Categorical Exclusion in accordance with 23 CFR 771.117(c) pursuant to activity (c)(26). A copy of the NEPA Categorical Exclusion is included as **Attachment 6**.

FISCAL IMPACT:

The City has received \$395,729 in federal aid funds for the Project, as shown in the Caltrans authorization and allocated to the Capital Project Fund (Fund 261) in Account No. 261-4491-50322. The City Council previously appropriated \$51,000 from the Local Measure A Fund (Fund 134) in the 2014-2015 Fiscal Year, and an additional \$450,000 in the 2015-2016 Fiscal Year. The Project's overall budget, and incurred expenditures, is identified in Table 1 on the following page.

Table of Project Costs	Amount
STP Funding	\$395,729
Measure A Fund	\$501,000
Project Administration (Expended to Date)	(\$6,711)
Project Administration (Estimated)	(\$5,000)
Construction Management (Estimated)	(\$25,000)
Construction Contract	(\$754,385)
Construction Contingency	(\$75,000)
Remaining Balance	\$30,633

Table 1

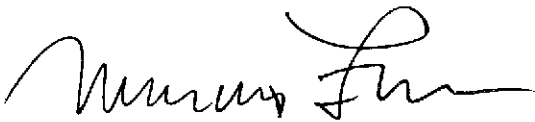
Funds to encumber for award of the construction contract in the amount of \$754,385 with Match Corporation are available from the following accounts:

- Capital Project Account No. 261-4491-50322: \$395,729
- Local Measure A Account No. 134-4498-50322: \$358,656

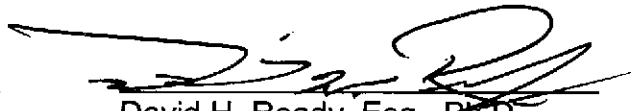
SUBMITTED:

Prepared by:

Approved by:



Marcus L. Fuller, MPA, P.E., P.L.S.
 Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.
 City Manager

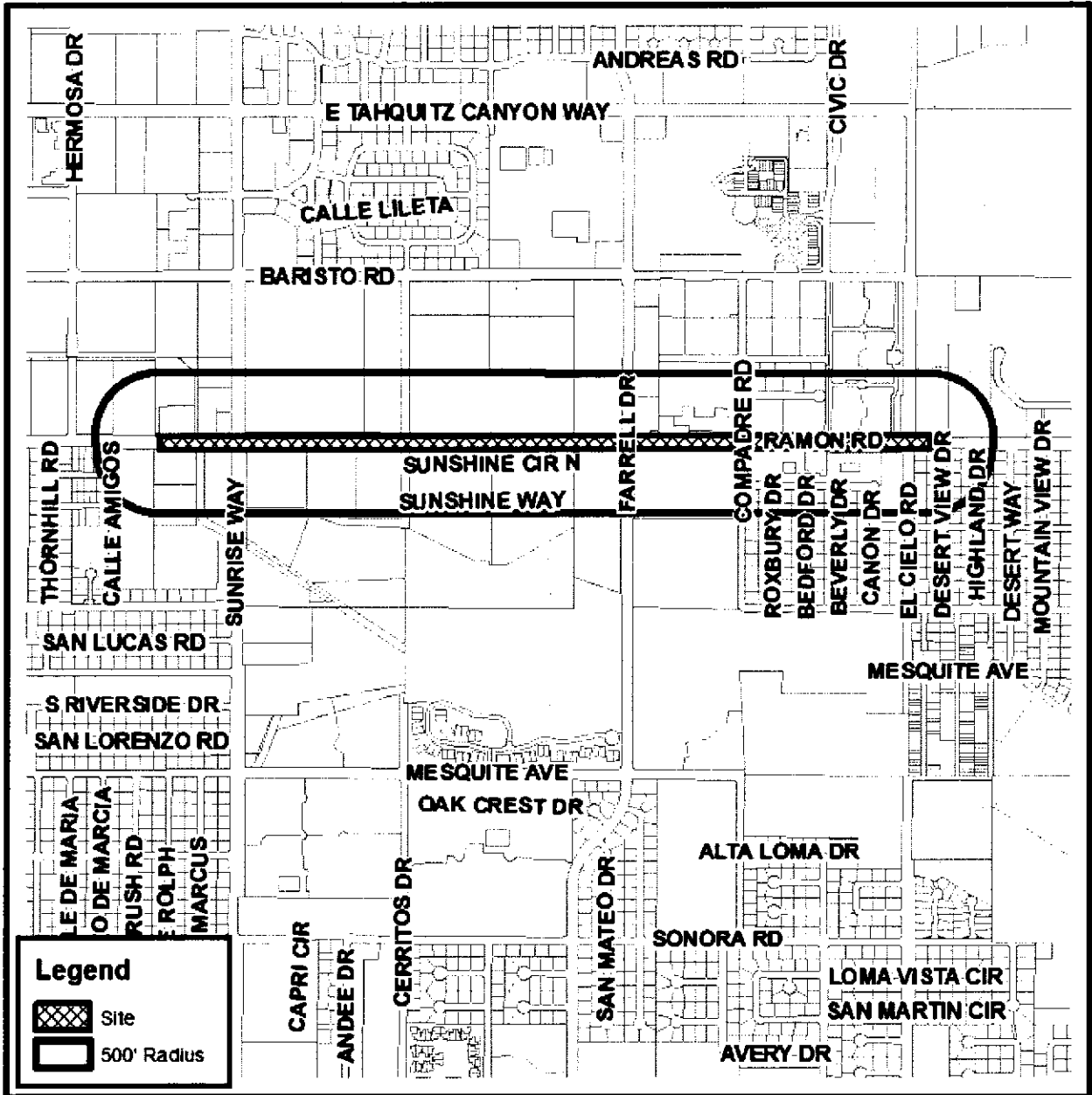
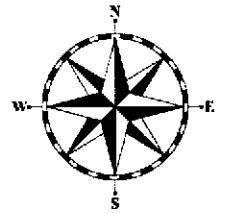
Attachments:

1. Vicinity Map
2. Federal Funding Authorization (E-76)
3. Bid Summary
4. Construction Contract
5. CEQA – NOE
6. NEPA - CE

ATTACHMENT 1



Department of Public Works and Engineering
Vicinity Map



CITY OF PALM SPRINGS

ATTACHMENT 2

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND LOCAL ASSISTANCE
464 W. 4TH STREET, 6TH Floor, MS-760
SAN BERNARDINO, CA 92401-1400
PHONE (909) 383-4030
FAX (909) 383-5936
TTY 711
www.dot.ca.gov/dist8/



*Flex your power!
Be energy efficient!*

September 16, 2015

Marcus L. Fuller
Director of Public Works / City Engineer
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

08-RIV-0-PSP
STPLN-5282 (043)
Pavement Rehabilitation
Along Ramon Road from
650' West of Sunrise Way to
700' East of Compadre Road

Dear Mr. Fuller:

We have reviewed and processed your obligation submittal for the above-referenced project through Caltrans Headquarters and the Federal Highway Administration (FHWA). You are hereby authorized to begin the Construction phase of your project. Enclosed is a copy of the authorizing document (E-76) for your records.

Please consult your Local Assistance Procedures Manual (LAPM), Chapter 15, for proper Advertising and Award procedures. The City shall follow its normal procedure in awarding the contract to the lowest responsible bidder and assuring us that all federal requirements have been met, including an approved Quality Assurance Program.

Please notify this office in writing of the date of the bid opening. After the bid opening and award, please send us the following items:

- A complete award package as outlined in Chapter 15, section 15.7.
- One copy of plans and specifications, as advertised.

Prospective bidders should be reminded of the Disadvantage Business Enterprise (DBE) requirements contained in Chapter 9 of the Local Assistance Procedures Manual.

Please be reminded of the invoice processing requirements and reimbursement process in Chapter 5 of the LAPM. Invoices for reimbursement cannot be submitted until after funds are encumbered via an executed Program Supplemental Agreement (PSA) and/or an executed Finance Letter.

If you have any questions, please call me or my staff, Alberto Vergel De Dios at (909) 809-3944.

Sincerely,

Sean Yeung, P.E.
District Local Assistance Engineer

Attachment: E-76

- c:
- Grace Alvarez, RCTC
 - Anna Alonso, Caltrans Construction Oversight Engineer
 - Savat Khamphou, City of Palm Springs
 - George Farago, City of Palm Springs

AUTHORIZATION / AGREEMENT SUMMARY - (E-76)

CALIFORNIA DEPARTMENT OF TRANSPORTATION

FEDERAL AID PROGRAM

DLA LOCATOR: 08-RIV-0-PSP
 PREFIX: STPLN
 PROJECT NO: 5282(043)
 SEQ NO: 1
 STATE PROJ NO: 0814000219L-N
 AGENCY: PALM SPRINGS

PROJECT LOCATION:
 RAMON ROAD FROM 650 FEET WEST OF SUNRISE WAY TO 700 FEET EAST OF COMPADRE ROAD
 TYPE OF WORK:
 PAVEMENT REHABILITATION
 FED RR NO'S:
 PUC CODES:
 PROJ OVERSIGHT: DELEGATED/LOCAL ADMIN
 ENV STATUS / DT: DELEG TO STATE USC 326/SEC 6004 12/11/2014
 RW STATUS / DT: 1 07/23/2015
 INV RTE: 000000000000
 BEG MP: 0
 END MP: 0

PREV AUTH / AGREE DATES:

PE:
 RW:
 CON:
 SPR:
 MCS:
 OTH:

ROUTE:
TIP DATA
 MPO: SCAG
 FSTIP YR: 14/15
 STIP REF: 209-4000-4164

DISASTER NO:
 BRIDGE NO'S:

PROG CODE	LINE NO	IMPV TYPE	FUNC SYS	URBAN AREA	URB/RURAL	DEMO ID
M23E	30	06	P	MAP21 INDIO-CATHEDRAL CITY	URBAN	
M23E	31	17	P	MAP21 INDIO-CATHEDRAL CITY	URBAN	

FUNDING SUMMARY

PHASE	PROJECT COST	FEDERAL COST	AC COST
PE	PREV. OBLIGATION	\$0.00	\$0.00
	THIS REQUEST	\$0.00	\$0.00
	SUBTOTAL	\$0.00	\$0.00
R/W	PREV. OBLIGATION	\$0.00	\$0.00
	THIS REQUEST	\$0.00	\$0.00
	SUBTOTAL	\$0.00	\$0.00
CON	PREV. OBLIGATION	\$0.00	\$0.00
	THIS REQUEST	\$447,000.00	\$395,729.00
	SUBTOTAL	\$447,000.00	\$395,729.00
TOTAL:	\$447,000.00	\$395,729.00	\$0.00

STATE REMARKS

- 08/27/2015 SEQ 1. This is a request for Construction and Construction Engineering funding using the Regional Surface Transportation Program funds for pavement rehabilitation of Ramon Road from West of Sunrise Way to East of Compadre Road. The project is programmed for FY 14-15 in RCTC's lump sum listing RIV130402 in Amendment #4 approved on 4/08/15 to SCAG's 2015 FTIP. The original NEPA decision approved on 12/11/2014 was re-validated on 08/26/2015. Maximum reimbursement ratio of 88.53% on a pro-rata basis.
- 08/27/2015 SEQ 1. Agreement End Date is on June 30, 2018.
- 09/08/2015 This is a request for construction and construction engineering funding for the rehabilitation and associated work of Ramon Road from approximately 650 feet west of Sunrise Way to approximately 700 feet east of Compadre Road in the City of Palm Springs using Regional Surface Transportation Program (RSTP) funds programmed for FY 14-15 in RCTC's FTIP ID RIV130402 lump sum listing in Amendment #4 approved on 4/08/15 to SCAG's 2015 FTIP. The original NEPA decision approved on 12/11/14 was re-validated on 8/26/15. Federal funding is capped at \$396,000 for construction with maximum reimbursement ratio of 88.53%. Reimburse with M23E RSTP funds at approximately 50.5% on a lump sum reimbursement basis up to the federal amount shown for construction and construction engineering.

FEDERAL REMARKS

AUTHORIZATION

AUTHORIZATION TO PROCEED WITH REQUEST: CON
 FOR: CONSTRUCTION & CENG.
 DOCUMENT TYPE: AAGR

PREPARED IN FADS BY: VERGEL DE DIOS, ALBERTO
 REVIEWED IN FADS BY: LOUIE, PATRICK
 SUBMITTED IN FADS BY: LOUIE, PATRICK
 PROCESSED IN FADS BY: FOGLE, JERILYNN
 APPROVED IN FMIS BY: TASIA PAPAJOHN

ON 08/27/2015 806-3944
 ON 09/08/2015 653-7349
 ON 09/09/2015 FOR CALTRANS
 ON 09/14/2015 FOR FHWA
 ON 09/16/2015

SIGNATURE HISTORY FOR PROJECT NUMBER 5282(043) AS OF 09/18/2015

FHWA FMIS 4.0 SIGNATURE HISTORY

<u>MOD #</u>	<u>SIGNED BY</u>	<u>SIGNED ON</u>
0	JERILYNN FOGLE	09/15/2015
	ZYLKIA MARTIN-YAMBO	09/16/2015
	TASIA PAPAJOHN	09/16/2015

FHWA FMIS 3.0 SIGNATURE HISTORY

CALTRANS SIGNATURE HISTORY

<u>DOCUMENT TYPE</u>	<u>SIGNED BY</u>	<u>SIGNED ON</u>
AUTH/AGREE	LOUIE, PATRICK	09/09/2015

ATTACHMENT 3

**RAMON ROAD PAVEMENT REHABILITATION
CITY PROJECT NO. 14-02
BID SUMMARY**

Bid Opening: November 19, 2015

BID SCHEDULE A		QUANT.	UNIT	R-JS GENERAL CONSTRUCTION		MATCH CORPORATION		HARDY & HARPER, INC.		ALL AMERICAN ASPHALT		GRANITE CONSTRUCTION CO.	
BID ITEM	ITEM DESCRIPTION			UNIT PR.	TOTAL	UNIT PR.	TOTAL	UNIT PR.	TOTAL	UNIT PR.	TOTAL	UNIT PR.	TOTAL
1	Mobilization	1	LS	\$15,000.00	\$15,000.00	\$100,500.00	\$100,500.00	\$38,000.00	\$38,000.00	\$38,000.00	\$38,000.00	\$40,000.00	\$40,000.00
2	Temporary Traffic Control	1	LS	\$10,000.00	\$10,000.00	\$36,000.00	\$36,000.00	\$96,000.00	\$96,000.00	\$25,000.00	\$25,000.00	\$42,945.00	\$42,945.00
3	Water Pollution Control	1	LS	\$8,000.00	\$8,000.00	\$900.00	\$900.00	\$7,000.00	\$7,000.00	\$3,500.00	\$3,500.00	\$4,000.00	\$4,000.00
4	Cold Mill Existing A.C. Pavement (Depth=2")	322,000	SF	\$0.22	\$70,840.00	\$0.25	\$80,500.00	\$0.17	\$54,740.00	\$0.28	\$90,160.00	\$0.35	\$112,700.00
5	Asphalt Concrete Type C2 (Depth=2")	4,000	TON	\$75.00	\$300,000.00	\$67.00	\$268,000.00	\$77.00	\$308,000.00	\$92.00	\$368,000.00	\$110.00	\$440,000.00
6	Remove and Reconstruct Existing Curb Ramps (Type A, Type B, or Type C)	230	CY	\$350.00	\$80,500.00	\$560.00	\$128,800.00	\$500.00	\$115,000.00	\$525.00	\$120,750.00	\$100.00	\$23,000.00
7	Modify Median Pedestrian Crossing @ Compadre Road per Exhibit B	1	LS	\$7,000.00	\$7,000.00	\$12,400.00	\$12,400.00	\$13,000.00	\$13,000.00	\$16,000.00	\$16,000.00	\$10,000.00	\$10,000.00
8	Traffic Striping, Signage & Markings	1	LS	\$19,500.00	\$19,500.00	\$16,400.00	\$16,400.00	\$24,410.00	\$24,410.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
9	Temporary Traffic Control (Non-Participating)	1	LS	\$3,000.00	\$3,000.00	\$6,100.00	\$6,100.00	\$15,000.00	\$15,000.00	\$5,000.00	\$5,000.00	\$15,000.00	\$15,000.00
10	Water Pollution Control (Non-Participating)	1	LS	\$3,500.00	\$3,500.00	\$350.00	\$350.00	\$1,000.00	\$1,000.00	\$900.00	\$900.00	\$1,000.00	\$1,000.00
11	Cold Mill Existing A.C. Pavement (Depth=2") (Non-Participating)	52,000	SF	\$0.22	\$11,440.00	\$0.30	\$15,600.00	\$0.17	\$8,840.00	\$0.28	\$14,560.00	\$0.35	\$18,200.00
12	Asphalt Concrete Type C2 (Depth=2") (Non-Participating)	630	TON	\$75.00	\$47,250.00	\$69.00	\$43,470.00	\$77.00	\$48,510.00	\$92.00	\$57,960.00	\$110.00	\$69,300.00
13	Remove and Reconstruct Existing Curb Ramps (Type A, Type B, or Type C) (Non-Participating)	20	CY	\$350.00	\$7,000.00	\$740.00	\$14,800.00	\$500.00	\$10,000.00	\$525.00	\$10,500.00	\$100.00	\$2,000.00
14	Install Type E Vehicle Detection Loop (Non-Participating)	9	EA	\$600.00	\$5,400.00	\$385.00	\$3,465.00	\$500.00	\$4,500.00	\$390.00	\$3,510.00	\$375.00	\$3,375.00
15	Traffic Striping, Signage & Markings (Non-Participating)	1	LS	\$3,000.00	\$3,000.00	\$2,100.00	\$2,100.00	\$8,000.00	\$8,000.00	\$3,000.00	\$3,000.00	\$5,000.00	\$5,000.00
16	Field Orders (Non-Participating)	1	LS	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
				TOTAL =	\$616,430.00	TOTAL =	\$754,385.00	TOTAL =	\$777,000.00	TOTAL =	\$806,840.00	TOTAL =	\$836,520.00

1

2

3

4

5

ATTACHMENT 4

**AGREEMENT
(CONSTRUCTION CONTRACT)**

THIS AGREEMENT made this ____ day of _____, 20__, by and between the City of Palm Springs, a charter city, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the City, and Match Corporation, a California Corporation, hereinafter designated as the Contractor.

The City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 -- THE WORK

For and in consideration of the payments and agreements to be made and performed by City, Contractor agrees to furnish all materials and perform all work required to complete the Work as specified in the Contract Documents, and as generally indicated under the Bid Schedule(s) for the Project entitled:

**RAMON ROAD PAVEMENT REHABILITATION
CITY PROJECT NO. 14-02
FEDERAL AID PROJECT NO. STPLN-5282 (043)**

The Work comprises cold-milling and overlay of Ramon Road generally located between Sunrise Way and El Cielo Road, including: surveying and monument control (corner records), and recording, preservation and resetting of existing survey monuments; cold-milling of existing asphalt concrete pavement; asphalt concrete paving; adjustment of sewer manholes and water valves to grade; removal and replacement of concrete curb ramps; installation of truncated domes; traffic striping, signage and markings; replacement of inductive loop vehicle detectors; and all other appurtenant work

ARTICLE 2 -- COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed.

The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages or delay (but not as a penalty), the Contractor shall pay the City the sum specified in Section 6-9 of the Special Provisions for each calendar day that expires after the time specified in Article 2, herein. In executing the Agreement, the Contractor acknowledges it has reviewed the provisions of the Standard Specifications, as modified herein, related to liquidated damages, and has made itself aware of the actual loss incurred by the City due to the inability to complete the Work within the time specified in the Notice to Proceed.

ARTICLE 3 -- CONTRACT PRICE

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid Proposal and Bid Schedule(s), and any duly authorized Construction Contract Change Orders approved by the City. The amount of the initial contract award in accordance with the Contractor's Bid Proposal is **\$754,385**.

Contractor agrees to receive and accept the prices set forth herein, as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the Work during its progress or prior to its acceptance including those for well and faithfully completing the Work and the whole thereof in the manner and time specified in the Contract Documents; and, also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the Work, suspension or discontinuance of the Work, and all other unknowns or risks of any description connected with the Work.

ARTICLE 4 -- THE CONTRACT DOCUMENTS

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, Federal Labor Standards Provisions, Federal Rates of Prevailing Wages, the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-collusion Declaration, Equal Employment Opportunity Certification, Debarment and Suspension Certification, Non-Lobbying Certification for Federal-Aid Contracts, Disclosure of Lobbying Activities, Bid Security or Bid Bond, Bidder's General Information, Exhibit 15G Local Agency Bidder DBE Commitment, Exhibit 15H DBE Information – Good Faith Efforts, Public Contract Code Section 10285.1 Statement, Public Contract Code Section 10162 Questionnaire, Public Contract Code Section 10232 Statement, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda numbers 1 to 3, inclusive, and all Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

The Contract Documents shall also incorporate those certain Federal Requirements for Federal-Aid Construction Projects (Form FHWA 1273), included in **Exhibit "A"** attached hereto and made a part hereof.

ARTICLE 5 -- MUTUAL OBLIGATIONS

For and in consideration of the payments and agreements to be made and performed by the City, the Contractor agrees to furnish all materials and perform all work required for the above stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

City hereby agrees to employ, and does hereby employ, Contractor to provide the materials, complete the Work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for the Contract Price herein identified, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the Contract Documents.

Contractor specifically acknowledges and agrees to be bound by the Wage Rates and Labor Code requirements specified in the Contract Documents, including the requirement to furnish electronic certified payroll records directly to the Labor Commissioner (via the Division of Labor Standards Enforcement), and shall pay the general prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations of the State of California.

ARTICLE 6 -- PAYMENT PROCEDURES

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the City Engineer as provided in the Contract Documents.

ARTICLE 7 -- NOTICES

Whenever any provision of the Contract Documents requires the giving of a written Notice between the parties, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

ARTICLE 8 -- INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the City, and all of its officers and agents from any claims, demands, or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the Work undertaken by the Contractor hereunder. This Article 8 incorporates the provisions of Section 7-15 "Indemnification," of the Special Provisions, which are hereby referenced and made a part hereof.

ARTICLE 9 -- NON-DISCRIMINATION

The Contractor represents and agrees that it does not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, or national origin in any matter including without limitation employment upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

ARTICLE 10 -- MISCELLANEOUS

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

SIGNATURES ON NEXT PAGE

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

**CITY OF PALM SPRINGS,
CALIFORNIA**

CONTRACTOR

By _____
David H. Ready
City Manager

By: _____
Firm/Company Name

ATTEST:

By _____
James Thompson
City Clerk

By: _____
Signature (notarized)

Name: _____

APPROVED AS TO FORM:

By _____
Douglas Holland
City Attorney

Title: _____

By: _____
Signature (notarized)

RECOMMENDED:

By _____
Marcus L. Fuller,
Assistant City Manager/City Engineer

Name: _____

Title: _____

APPROVED BY THE CITY COUNCIL:

Date _____

Agreement No. _____

EXHIBIT "A"
Federal Requirements
for
Federal-Aid Construction Projects
(Form FHWA 1273),
Female and Minority Goals,
Federal Trainee Program,
Title IV Assurances

FOLLOWS THIS PAGE

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 qualifiable 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

RAMON ROAD PAVEMENT REHABILITATION
CITY PROJECT NO. 14-02
SEPTEMBER 2015

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 contractor). "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 contractor). "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.

FEMALE AND MIONORITY GOALS

The nationwide goal for female utilization is 6.9 percent.
 The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

MINORITY UTILIZATION GOALS

Economic Area		Goal-%
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA	28.9
	CA Monterey	25.6
	7360 San Francisco-Oakland	
	CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	19.6
	7400 San Jose, CA	
	CA Santa Clara, CA	14.9
	7485 Santa Cruz, CA	
	CA Santa Cruz	9.1
	7500 Santa Rosa	
	CA Sonoma	17.1
8720 Vallejo-Fairfield-Napa, CA		
CA Napa; CA Solano	23.2	
Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito		
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA	16.1
	CA Placer; CA Sacramento; CA Yolo	14.3
	Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA	12.3
	CA Stanislaus	
	8120 Stockton, CA	24.3
	CA San Joaquin	
	Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA	19.1
	CA Kern	
	2840 Fresno, CA	26.1
	CA Fresno	
	Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	23.6

For each July during which work is performed under the contract, you and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

FEDERAL TRAINEE PROGRAM

For the Federal training program, the number of trainees or apprentices is identified in Section 7-2.3 of the Special Provisions.

This section applies if a number of trainees or apprentices is specified in Section 7-2.3 of the Special Provisions.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the City of Palm Springs:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the City of Palm Springs approval for this submitted information before you start work. The City of Palm Springs credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The City of Palm Springs and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - Meet the your equal employment opportunity responsibilities
 - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City of Palm Springs reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and you do at least one of the following:
 - Contribute to the cost of the training
 - Provide the instruction to the apprentice or trainee
 - Pay the apprentice's or trainee's wages during the off-site training period
3. If you comply this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

TITLE VI ASSURANCES

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- (1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION

*** * * END OF EXHIBIT "A" * * ***

ATTACHMENT 5

NOTICE OF EXEMPTION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Clerk of the Board
County of Riverside
P.O. Box 751
Riverside, CA 92502-0751

Project Title: Ramon Road Pavement Rehabilitation, City Project No. 14-02

Project Applicant: City of Palm Springs

Project Location (Specific): Ramon Road from Sunrise to Compadre

Project Location (City): City of Palm Springs

Project Location (County): Riverside

Project Description: The scope of work consists of cold milling existing asphalt concrete (AC) pavement; installation of AC in designated pavement cracks; construction of asphalt concrete overlay; removal and reconstruction of AC pavement; installation of inductive loop vehicle detectors; removal, reconstruction, and upgrade of ADA curb ramps; traffic striping and markings and all other appurtenant work.

Name of Public Agency Approving Project: City of Palm Springs

Name of Person or Agency Carrying Our Project: City of Palm Springs, Public Works & Engineering Department

Exempt Status: (check one)

- Ministerial (Sec. 21080(b) (1); 15268);
- Declared Emergency (Sec. 21080(b) (3); 15269(a));
- Emergency Project (Sec. 21080(b) (4); 15269 (b)(c));
- Categorical Exemption. State type and section number: 15301 (c)
- Statutory Exemptions. State code number:

FILED / POSTED

County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder

E-201500412
05/21/2015 01:01 PM Fee: \$ 50.00
Page 1 of 1

Filed: 02 2015 By:  Deputy

Reasons why project is exempt: The Project consists of the repair and maintenance of existing City streets, involving negligible or no expansion of use beyond that existing at the time of the City's determination. Therefore, the Project is considered Categorically Exempt from CEQA pursuant to Section 15301 © of the CEQA Guidelines.

Lead Agency Contact Person: Savat Khamphou, P.E. **Area Code/Telephone/Extension:** (760) 323-8744, ext. 8744

If filed by applicant:

- 1. Attach certified document of exemption finding.
- 2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature:  Date: _____ Title: Asst. Director of Public Works/Asst. City Engineer

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date received for filing at OPR: _____

ATTACHMENT 6

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM

08/RIV/Palm Springs		STPLN 5282 (043)	
Dist.-Co.-Rte. (or Local Agency)	P.M./P.M.	E.A/Project No.	Federal-Aid Project No. (Local Project)/Project No.

PROJECT DESCRIPTION: (Briefly describe project including need, purpose, location, limits, right-of-way requirements, and activities involved in this box. Use Continuation Sheet, if necessary.)

The local agency proposes work consist of milling of existing asphalt concrete pavement; installation of AC in designated pavement cracks; construction of asphalt concrete overlay; removal and reconstruction of AC pavement; installation of inductive loop vehicle detectors; removal, reconstruction, and upgrade of ADA curb ramps; traffic stripping and markings and all other appurtenant work. The project limits are on Ramon Road within the existing right-of-way from 670' west of Sunrise Way to 700' east of Compadre Road.

CEQA COMPLIANCE (for State Projects only)

Based on an examination of this proposal and supporting information, the following statements are true and exceptions do not apply (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

CALTRANS CEQA DETERMINATION (Check one)

Exempt by Statute. (PRC 21080[b]; 14 CCR 15260 et seq.)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

- Categorically Exempt Class . (PRC 21084; 14 CCR 15300 et seq.)
- Categorically Exempt. General Rule exemption. (This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3].)

N/A	N/A
Print Name: Environmental Branch Chief	Print Name: Project Manager/DLA Engineer
N/A	N/A
Signature	Signature
Date	Date

NEPA COMPLIANCE

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

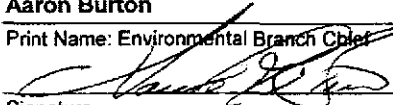
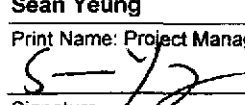
- does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b).

CALTRANS NEPA DETERMINATION (Check one)

23 USC 326: The State has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. The State has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding dated June 07, 2013, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:

- 23 CFR 771.117(c): activity (c)(26)
- 23 CFR 771.117(d): activity (d)()
- Activity ___ listed in Appendix A of the MOU between FHWA and the State

23 USC 327: Based on an examination of this proposal and supporting information, the State has determined that the project is a CE under 23 USC 327.

Aaron Burton Print Name: Environmental Branch Chief  Signature Date: 12-10-14	Sean Yeung Print Name: Project Manager/DLA Engineer  Signature Date: 12/11/14
---	--

Date of Categorical Exclusion Checklist completion: 12/10/14 Date of ECR or equivalent : 12/10/14

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g., CE checklist, additional studies and design conditions).

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM
Continuation Sheet

08/RIV/Palm Springs			STPLN 5282 (043)
Dist.-Co.-Rte. (or Local Agency)	P.M./P.M.	E.A/Project No.	Federal-Aid Project No. (Local Project)/Project No.
Continued from page 1:			
Project Description:			
The local agency proposes work consist of milling of existing asphalt concrete pavement; installation of AC in designated pavement cracks; construction of asphalt concrete overlay; removal and reconstruction of AC pavement; installation of inductive loop vehicle detectors; removal, reconstruction, and upgrade of ADA curb ramps; traffic stripping and markings and all other appurtenant work. The project limits are on Ramon Road within the existing right-of-way from 670' west of Sunrise Way to 700' east of Compadre Road.			
Permits:			
NPDES			