



City of Rosemount

REQUEST FOR PROPOSALS (RFP)

ZONING CODE UPDATE

June 17, 2022

INTRODUCTION AND PROJECT SCOPE

The Rosemount City Council adopted the 2040 Comprehensive Plan Update in March 2020. Chapter 473 of Minnesota State Statute requires cities in the 7-county Metropolitan Area to establish a Comprehensive Plan and to update that plan every 10 years. Since the adoption of the 2040 Comprehensive Plan, city staff has run into several instances where the official control (i.e., zoning ordinance) is either in conflict with the Comprehensive Plan or has not been updated to address current market trends/changes. Staff has worked to address these changes on a case by case basis, largely through the use of text amendments to the zoning ordinance. Given the fast pace of growth in the City of Rosemount and the rapid changes in development practices and market conditions post-pandemic, staff recommends a wholesale review and update of Titles 11 of the city code as they relate to Zoning and Subdivision regulations, respectively, is prudent. Other Titles may be impacted to ensure consistency through the city's code. The updates should include, but not be limited to, the following:

- Reviewing the existing zoning districts and the uses within each. Consolidation of zoning districts where appropriate to eliminate overlap and conflicting regulations.
- Review of all zoning definitions and uses. Revise, add or remove definitions/uses as necessary and then make corresponding changes within zoning districts.
- Review performance standards for DT Downtown District and BP Business Park.
- Review the need for the creation of new zoning districts, as it pertains to mixed-use commercial and special areas such as the Akron intersection and County Road 42 commercial nodes.

The City wishes to enter into a Professional Services Agreement to complete the 2022 City Code Update. The intent of this update is to create a set of zoning and subdivision regulations that are modern, consistent and user-friendly.

Role of the Consultant The anticipated roles of the consultant team members are as follows:

- Project management; research, analysis, drafting, and overall ordinance editing.

Responsibilities of the City In general, the city will be responsible for:

- Providing a staff project manager;
- Providing information regarding current practices, processes, and policies relating to the zoning ordinance and subdivision regulations;
 - City staff will generate and provide the consultant with a list of topics and/or items that should be considered and reviewed as part of this process.
- Making arrangements for all meetings, including space, A/V equipment, invitations, and notices;
- Providing paper copies of meeting agendas and materials for distribution at meetings;
- Preparing the content of public notices and printing and mailing public notices;
- Printing and distributing documents;
- Providing digital map files for use on the zoning and subdivision regulations project;
- Providing legal review of the documents, as necessary;
- Reviewing the consultant team's work products for the purpose of providing comments and suggestions for improvements and changes

Task 1: Code Review and Issue Identification (Estimated time: 3 Weeks)

During Task 1, the consultant team will work with city staff to kick-off the project and identify the key development regulation issues to be addressed in Rosemount's revised zoning.

1.1 City Staff/Consultant Meetings and Data Collection

The consultant team will meet with city staff to discuss specific issues, problems and opportunities related to the existing zoning and subdivision regulations. The team will also work with staff to obtain copies of any additional documents and information that will help in identifying strengths and weaknesses of the current regulations.

1.2 Ordinance Review

The consultant team will begin its independent review of Rosemount's existing zoning and subdivision ordinances to assess its strengths and weaknesses. During this task, the team will also begin review of relevant state statutes and municipal code provisions.

Task 1 Work/Deliverables

- Document review (ordinances, plans, reports)
- Consultant team meetings with city staff
- Internal consultant team meetings

Task 2: Initial Ordinance Draft (Estimated time: 4 Weeks)

2.1 Draft

Following the review of the current zoning and subdivision regulations and identifying the various issues within each, the consultant team will begin the process of drafting the new zoning and subdivision regulations.

2.2 Staff Review

Following delivery of the draft ordinance, the consultant team will prepare and give a presentation to city staff explaining the contents of the draft ordinance and any major changes from the existing regulations and ordinances. Comments from city staff will be addressed at this time and incorporated into the draft ordinance prior to the public review.

Task 2 Work/Deliverables

- Consultant team meetings with city staff
- Initial zoning/subdivision regulations draft ordinance
- Presentation for Task 2 meetings

Task 3: Public Review of Draft (Estimated time: 2 Weeks)

3.1 City Council and Planning Commission Review of Draft

The consultant will prepare an overview of the proposed zoning/subdivision regulations and present it at a joint Planning Commission and City Council work session.

Task 3 Work/Deliverables

- Consultant team meetings with city staff
- Revised, draft zoning/subdivision regulations (based on staff comments)
- Presentation for joint work session
- Work session participation

Task 4: Hearing Draft (Estimated time: 3 Weeks)

Based upon city staff review and the joint Planning Commission and City Council work session, final revisions will be completed and the ordinance will be provided to the city ready for review and consideration at a required public hearing. At this time a public hearing will be set for the new and/or updated zoning and subdivision regulations.

Task 4 Work/Deliverables

- Revised draft of zoning/subdivision regulations (based on joint work session feedback). The ordinance should be in a form that is ready for presentation at a public hearing.

Task 5: Ordinance Adoption (Estimated time: 3 Weeks)

During Task 5, the consultant team will participate in the public hearing preceding the adoption of the final zoning/subdivision regulations (ordinance). The public hearing will be held at the Planning Commission. The consultant team will present summary overviews of the proposed document and be available to respond to questions and concerns that may arise during the public hearing. At the conclusion of the public hearing, the consultant team will make any needed revisions to the ordinance document to reflect revisions necessitated by the public hearing. A final version of the zoning and subdivision regulations (ordinance) will be provided to city staff to bring to the City Council for final adoption of the ordinance.

Task 5 Work/Deliverables

- Presentation for public hearing
- Public hearing participation
- Final revisions to ordinance(s) as necessary to reflect changes made in public hearing
- Final version (paper copy and electronic files) of adopted zoning/subdivision regulations

PROJECT TIMELINE

Staff anticipates the project to take 3-4 months for Tasks 1-5. The City will accept proposals until 4:00pm on July 15, 2022 with the intention of selecting a team by July 27, 2022.

BUDGET

The City of Rosemount has budgeted up to \$60,000 utilizing grant funds subject to federal procurement requirements as attached. Please review and note acceptance of these requirements in your response.

SUBMITTAL REQUIREMENTS

The proposal shall include:

1. A description of your understanding of the scope and nature of the project and services to be provided to achieve the objectives described above.
2. A detailed description of your approach and the methodology proposed for the project.
3. A company profile and background information for the project manager and key consultants on the project team.
4. A project schedule and name of personnel assigned to each step in the project.
5. A description of previous experience with preparation of zoning code revisions.
6. A timeframe for completing the work and a cost estimate for the work that is being proposed.

SUBMITTAL INSTRUCTIONS

To reply to this RFP, please email the proposal to:

Adam Kienberger
Community Development Director
adam.kienberger@rosemountmn.gov
651-322-2020

Eric Van Oss
Economic Development Coordinator
eric.vanoss@rosemountmn.gov
651-322-2059

Anthony Nemcek
Senior Planner
anthony.nemcek@rosemountmn.gov
651-322-2090

Proposals must be received by **4:00 p.m. July 15, 2022** and shall be clearly marked **“Rosemount Zoning Code RFP.”**

Questions regarding this Request for Proposal should be directed to:

Adam Kienberger
Community Development Director
City of Rosemount
2875 – 145th St W
Rosemount, Minnesota 55044
Telephone: 651-322-2020
adam.kienberger@rosemountmn.gov

SELECTION PROCESS

All proposals will be reviewed by the City. Proposals will be evaluated by considering the proposer's quality of experience, the strength of the approach described in the proposal and cost of services. Finalists may be invited for interviews, after which the City staff will negotiate a Professional Services Agreement with the selected finalist. If the City is unable to reach agreement with the selected finalist, the City will begin negotiations with other finalists, until an agreement satisfactory to the City is reached. The final agreement will be presented to the City Council for approval.

The City reserves the right to waive technicalities or irregularities, accept the proposals and award a contract, to postpone acceptance of the proposals and the award of the contract, to reject any and all proposals received and re-advertise the project, to negotiate for a partial work scope, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the City.

STANDARD ASSURANCES

1. **NON-DISCRIMINATION.** During the performance of this Contract, the Consultant shall not unlawfully discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status or public assistance status. The Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without unlawful discrimination because of their race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status or public assistance status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices which set forth the provisions of this nondiscrimination clause.

The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, disability, sexual orientation, age, marital status, or public assistance status.

No funds received under this Contract shall be used to provide religious or sectarian training or services.

The Consultant shall comply with any applicable federal or state law regarding non-discrimination. The following list includes, but is not meant to limit, laws which may be applicable:

A. The Equal Employment Opportunity Act of 1972, as amended, 42 U.S.C. § 2000e et seq. which prohibits discrimination in employment because of race, color, religion, sex or national origin.

B. Executive Order 11246, as amended, which is incorporated herein by reference, and prohibits discrimination by U.S. Government Consultants and subcontractors because of race, color, religion, sex or national origin.

C. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq. and 45 C.F.R. 84.3 (J) and (K) implementing Sec. 504 of the Act which prohibits discrimination against qualified handicapped persons in the access to or participation in federally-funded services or employment.

D. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq. as amended, and Minn. Stat. § 181.81, which generally prohibit discrimination because of age.

E. The Equal Pay Act of 1963, as amended, § 29 U.S.C. § 206, which provides that an employer may not discriminate on the basis of sex by paying employees of different sexes differently for the same work.

F. Minn. Stat. Ch. 363, as amended, which generally prohibits discrimination because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age.

G. Minn. Stat. § 181.59 which prohibits discrimination against any person by reason of race, creed, or color in any state or political subdivision contract for materials, supplies or construction. Violation of this section is a misdemeanor and any second or subsequent violation of these terms may be cause for forfeiture of all sums due under the Contract.

H. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, 47 U.S.C. §§ 225, 611, with regulations at 29 C.F.R. § 1630, which prohibits discrimination against qualified individuals on the basis of a disability in term, condition or privilege of employment.

2. **DATA PRIVACY.** For purposes of this Contract all data created, collected, received, stored, used, maintained, or disseminated by Consultant in the performance of this Contract is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as the Federal laws on data privacy, and Consultant must comply with those requirements as if it were a governmental entity. The remedies in section 13.08 apply to the Consultant. Consultant does not have a duty to provide access to public data to the public if the public data are available from the governmental agency (CDA), except as required by the terms of this Contract. All subcontracts shall contain the same or similar data practices compliance requirements.

3. **RECORDS DISCLOSURE/RETENTION.** Consultant's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription and audit by the CDA and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. The Consultant agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

4. **WORKER HEALTH, SAFETY AND TRAINING.** Consultant shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. Consultant shall make arrangements to ensure the health and safety of all subcontractors and other persons who may perform work in connection with this Contract. Consultant shall ensure all personnel of Consultant and subcontractors are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Contract. Each Consultant shall comply with federal, state and local occupational safety and health standards, regulations and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Consultant.

PROVISIONS FOR FEDERALLY FUNDED CONTRACTS

I. SPECIAL EQUAL OPPORTUNITY PROVISIONS

Activities and Contracts Not Subject to Executive Order 11246, as Amended

II. (Applicable to Federally assisted construction contracts and related subcontracts of \$10,000 and under.)

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

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractors shall incorporate the foregoing requirements in all subcontracts.

Executive Order 11245

(Applicable to Federally assisted contracts and related subcontracts of \$10,000 and over.)

1. Section 202 Equal Opportunity Clause

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

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

- (F) In the event of the contractor’s non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (G) The contractor will include the provisions of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).
- (A) The Offer’s or Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein.
 - (B) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Women / Minority Participation	5% Overall
<hr/>	
Timetables:	N/A

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

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

- (C) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of the award of any construction subcontract in excess of \$ 10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- (D) As used in this Notice, and in the contract resulting from this solicitation, the “Covered Area” is Dakota County, Minnesota.

3. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)
- (A) As used in these specifications:
- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands): and
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
- (B) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- (C) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- (D) The Contractor shall implement the specific affirmative action standards provided in paragraphs (G)(1) through (16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female employees the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- (E) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- (F) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of

employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- (G) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following;
- (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - (4) Provide immediate notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (G)(2) above.
 - (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - (8) Disseminate the contractor's EEO policy externally by including it any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not

later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youths both on the site and in other areas of a Contractor's work force.
 - (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - (14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- (H) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations [(G)(1) through (16)]. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations as enumerated above provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor.
- (I) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- (J) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (K) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- (L) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry

out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

- (M) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (G) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (N) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- (O) Nothing herein provided shall be constructed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

4. Segregated Facilities

The Contractor or Subcontractor will not maintain any facility which is provided for their employees in a segregated manner or permit their employees to perform their services at any location under their control where segregated facilities are maintained except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

Section 503 Handicapped

(Applicable to Federally assisted contracts and related subcontracts if \$2,500 or over.)

1. Affirmative Action for Handicapped Workers

- (A) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (B) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (C) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (D) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (E) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503

of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

- (F) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 402 Veterans of the Vietnam Era

(Applicable to Federally assisted contracts and related subcontracts of \$10,000 or over.)

1. Affirmative Action for Disabled for Disabled Veterans and Veterans of the Vietnam Era

- (A) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veteran status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (B) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (D) and (E).

- (C) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals for veterans and non-veterans. This listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding non-discrimination in employment.
- (D) The reports required by paragraph (B) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of the State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of non-disabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- (E) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so

advised the State system, there is no need to advise the State system when it is no longer bound by this contract clause.

- (F) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.
- (G) The provision of paragraphs (B), (C), (D), and (E) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
- (H) As used in this clause:
 - (1) "All suitable employment openings" includes, but is not limited to openings which occur in the following job categories: Production and non-production; plan and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full time employment, temporary employment of more than 3-days duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in educational institutions which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be in the best interest of the Government.
 - (2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the areas where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
 - (3) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
 - (4) "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- (I) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- (J) In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- (K) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and the rights of applicants and employees.
- (L) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
- (M) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulation, or orders of the Secretary issued pursuant to the Act, so that such

provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

Section 109 of the Housing and Community Development Act of 1974.

1. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

“Section 3” Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization of workers’ representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in a violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

III. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to Federally assisted construction contracts and related subcontracts exceeding \$100,000)

A. Compliance with Air and Water Acts

During the performance of this contract, the Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all non-exempt contractors and subcontractors shall furnish to the owner, the following:

- (1) A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any non-exempt contract or subcontract, is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every non-exempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

III. CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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

- A. No Federally 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 agency, a Member of Congress, an officer or employee 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 Federally appropriated funds have been paid or will be paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontract, sub-grant, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by Section 1332, Title 31, U.S. Code. 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.