# PROFESSIONAL/CONSULTANT SERVICES CONTRACT

**between the CITY OF SUMNER and**

**[INSERT CONSULTANT’S COMPANY NAME]**

THIS CONTRACT is made between the CITY OF SUMNER, a Washington municipal corporation (hereinafter the "City"), and [INSERT CONSULTANT’S COMPANY NAME], organized under the laws of the State of [INSERT STATE], located and doing business at [INSERT ADDRESS AND PHONE NUMBER] (hereinafter the “Consultant”)(collectively, the “Parties”).

**I. DESCRIPTION OF WORK.**

Consultant shall perform the following services for the City in accordance with the attached scope of work/engagement letter:

|  |
| --- |
| See Exhibit A. Should any provision of Consultant’s scope of work/engagement letter conflict with any provision of this agreement, this agreement shall govern. |

The Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

**II. TIME OF COMPLETION.** The Parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract.

**III. COMPENSATION.**

A. The City shall pay the Consultant a fee not to exceed $XXXX,000.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract.

B. The Consultant shall submit monthly invoices, unless otherwise agreed in writing by the City. The City shall, upon receipt of Consultant’s monthly invoice, process payment in accordance with the City’s standard payment schedules, but in no event less than forty-five (45) days after receipt of monthly invoice, unless it has provided a written dispute of the invoice (in whole or part) to the Consultant in a timely manner.

**IV. INDEPENDENT CONTRACTOR.** The Parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Contract.

**V. TERMINATION.** Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant’s possession pertaining to this project, which may be used by the City without restriction; provided, however, that the Consultant may retain copies of records and data for business records purposes. If the City’s use of the Consultant’s records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

**VI. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

**VII. INDEMNIFICATION.** Consultant shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the Consultant's intentionally damaging, reckless or negligent performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant’s liability hereunder shall be only to the extent of the Consultant’s negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Contract.

**VIII. INSURANCE.** The Consultant shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, and/or its agents, representatives, or employees.

**No Limitation**. The Consultant’s maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

# Minimum Scope of Insurance. The Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant’s Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant’s profession in the legal services industry.

**Minimum Amounts of Insurance:**  The Consultant shall maintain the following insurance limits during the entire duration of this Contract:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $2,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

# Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant’s insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
2. The Consultant’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**C. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

# D. Verification of Coverage The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work hereunder.

**IX. EXCHANGE OF INFORMATION.** The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Contract.

**X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.** Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City; provided, however, the Consultant has the right, subject to confidentiality, to use the Consultant’s work product for internal instructional and other purposes (including as an anonymized template for subsequent work product for the City or other clients). All records submitted by the City to the Consultant will be safeguarded by the Consultant. The Consultant shall make such data, documents, and files available to the City upon the City’s request. The City’s use or reuse of any of the documents, data and files created by the Consultant for this project by anyone other than the Consultant on any other project shall be without liability or legal exposure to the Consultant.

**XI. CITY'S RIGHT OF INSPECTION.** Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

**XII. PUBLIC RECORDS ACT.** The City is required to comply with the Public Records Act, codified in Chapter 42.56 RCW. From time to time, the City will receive requests for public records regarding City business. When a public records request is made regarding work performed or documents created under this Contract, Consultant shall conduct a thorough search of any and all potentially responsive public records created or maintained in the course of completing this Contract, shall provide those documents to the City in a timely manner following the request for search, and shall retain all records in accordance with the retainage schedule as published by the Washington Secretary of State. Following completion of the work pursuant to this contract, Consultant shall provide to the City any and all documents prepared, created or maintained in the course of completing this contract.

**XIII. WORK PERFORMED AT THE CONSULTANT’S RISK.** The Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant’s own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**XIV. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. Notwithstanding, the foregoing, any claims alleging professional negligence are not subject to arbitration and shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

F. Entire Contract**.** The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

G. Compliance with Laws. The Consultant agrees to comply with all applicable federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to the Consultant’s business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

I. Ratification. The parties agree to ratify and confirm any acts consistent with the authority and prior to the final approval of this contract.

J. Consultant’s Employees – Employment Eligibility Requirements (E-Verify).

The Consultant and any subcontractors shall comply with E-Verify as set forth in Sumner Municipal Code Chapter 3.30. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Consultant shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Consultant shall continue participation in E-Verify throughout the course of the Consultant’s contractual relationship with the City. If the Consultant uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Consultant. Upon execution of this Contract, the Consultant shall provide proof of compliance with this section by filling out and signing the attached Certification of Compliance with Sumner’s Municipal Code 3.30 “E-Verify” attached hereto as Exhibit B.

K. Debarment. The Consultant must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Consultant or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

L. Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), 29 CFR 5.5 shall apply. See Exhibit C, attached, and its provisions which are incorporated as if fully set forth herein.

**IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.**

|  |  |
| --- | --- |
| **CONSULTANT:**  By:  *(signature)*  Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:  *(Title)*  DATE: | **CITY OF SUMNER:**  By:  *(signature)*  Print Name: Kathy Hayden  Its Mayor  *(Title)*  DATE:  By:  *(signature)*  Print Name: Jason Wilson  Its City Administrator  *(Title)*  DATE:  Approved as to Form:  Attest: Approved as to form:    City Clerk City Attorney  DATE: DATE: |
| **NOTICES TO BE SENT TO:**  **[INSERT ADDRESS AND CONTACT]** | **NOTICES TO BE SENT TO:**  **CITY OF SUMNER:**  [Insert Name of City Rep. to Receive Notice]  City of Sumner  1104 Maple Street  Sumner, WA 98390  [Insert Telephone Number] (telephone)  [Insert Fax Number] (facsimile) |

**EXHIBIT A**

**SCOPE OF WORK/BUDGET**

**EXHIBIT B**

**“E-VERIFY”**

**[Insert only where applicable]**

**EXHIBIT C**

**APPENDIX II TO PART 200---CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the City of Sumner under federal award(s) are subject to the following provisions, as applicable.

1. Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of " federally assisted construction con­ tract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-l.4(b), in accordance with Executive Order 11246, " Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S .C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the following language is hereby incorporated into the contract as if fully set forth therein:

Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), the following provisions (29 CFR, Subtitle A Part 5, Subpart A, § 5.5, subsections (a)(1) – (a)(10)) shall apply:

1. Minimum wages.

(i) All [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and mechanics [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or working upon [the site of the work](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f3a7fa2ce30cce63493e1f1f21ebba16&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the [Secretary](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=528985a38b8b82fb0215aa64f705ef4c&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of Labor under the Copeland Act ( [29 CFR part 3](https://www.law.cornell.edu/cfr/text/29/part-3))), the full amount of [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of the [Secretary](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=528985a38b8b82fb0215aa64f705ef4c&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanics are considered [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) paid to such [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanics, subject to the provisions of [paragraph (a)(1)(iv)](https://www.law.cornell.edu/cfr/text/29/5.5#a_1_iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and mechanics shall be paid the appropriate wage rate and fringe benefits on the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). [Laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (including any additional classification and wage rates conformed under [paragraph (a)(1)(ii)](https://www.law.cornell.edu/cfr/text/29/5.5#a_1_ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at [the site of the work](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f3a7fa2ce30cce63493e1f1f21ebba16&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall require that any class of [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanics, including helpers, which is not listed in the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and which is to be [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) under the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall be classified in conformance with the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5). The [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5); and

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

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5).

(B) If the contractor and the [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and mechanics to be [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) in the classification (if known), or their representatives, and the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) to the [Administrator](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7662294b14776f1d038a8098c0d75557&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The [Administrator](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7662294b14776f1d038a8098c0d75557&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or will notify the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) within the 30-day period that additional time is necessary.

(C) In the event the contractor, the [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanics to be [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) in the classification or their representatives, and the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall refer the questions, including the views of all interested parties and the recommendation of the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=12&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), to the [Administrator](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7662294b14776f1d038a8098c0d75557&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) for determination. The [Administrator](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7662294b14776f1d038a8098c0d75557&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), or an authorized representative, will issue a determination within 30 days of receipt and so advise the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or will notify the [contracting officer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=23b22fcd11a00dc67da3d82ac204422a&term_occur=11&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) for a class of [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of any [laborer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=11&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the [Secretary](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=528985a38b8b82fb0215aa64f705ef4c&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=528985a38b8b82fb0215aa64f705ef4c&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The City of Sumner 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or any other Federal [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) with the same prime contractor, or any other federally-assisted [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=12&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and mechanics, including [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), trainees, and helpers, [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) by the contractor or any subcontractor the full amount of [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) required by the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5). In the event of failure to pay any [laborer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=13&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanic, including any [apprentice, trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f90a03d67ddfcde39f3df670ff0d4546&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), or helper, [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or working on [the site of the work](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f3a7fa2ce30cce63493e1f1f21ebba16&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) required by the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=11&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all [laborers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=14&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and mechanics working at [the site of the work](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f3a7fa2ce30cce63493e1f1f21ebba16&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) paid. Whenever the [Secretary](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=528985a38b8b82fb0215aa64f705ef4c&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of Labor has found under [29 CFR 5.5(a)(1)(iv)](https://www.law.cornell.edu/cfr/text/29/5.5) that the [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of any [laborer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=15&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=16&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or [trainees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) programs, the registration of the [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=12&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) work is performed a copy of all payrolls to the City if the [agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) is a party to the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=13&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), but if the [agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the City. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under [29 CFR 5.5(a)(3)(i)](https://www.law.cornell.edu/cfr/text/29/5.5), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f41487a77a1cb3ff3b9016fb246abba6&term_occur=1&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (e.g., the last four digits of the [employee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f41487a77a1cb3ff3b9016fb246abba6&term_occur=2&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5)'s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City if the [agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) is a party to the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=14&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), but if the [agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the City, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government [agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) under the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=15&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, [29 CFR part 5](https://www.law.cornell.edu/cfr/text/29/part-5), the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, [29 CFR part 5](https://www.law.cornell.edu/cfr/text/29/part-5), and that such information is correct and complete;

(2) That each [laborer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=17&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) or mechanic (including each helper, apprentice, and trainee) [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) on the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=16&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) during the payroll period has been paid the full weekly [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full [wages](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=da5a5993c3896991d7da51806bd147a0&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) earned, other than permissible deductions as set forth in Regulations, [29 CFR part 3](https://www.law.cornell.edu/cfr/text/29/part-3);

(3) That each [laborer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d905132c71c650640a4c95b8a6dd1e8&term_occur=18&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) incorporated into the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=17&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5).

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by [paragraph (a)(3)(ii)(B)](https://www.law.cornell.edu/cfr/text/29/5.5#a_3_ii_B) of this section.

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

(iii) The contractor or subcontractor shall make the records required under [paragraph (a)(3)(i)](https://www.law.cornell.edu/cfr/text/29/5.5#a_3_i) of this section available for inspection, copying, or transcription by authorized representatives of the City or the Department of Labor, and shall permit such representatives to interview [employees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f41487a77a1cb3ff3b9016fb246abba6&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the [Federal agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b4e131938a9c32c639bec3ecd8346c5a&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](https://www.law.cornell.edu/cfr/text/29/5.12).

(4) Apprentices and trainees.

(i) Apprentices. [Apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) will be permitted to work at less than the predetermined rate for the work they performed when they are [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) recognized by the Office, or if a person is [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=11&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) as stated above, shall be paid not less than the applicable wage rate on the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=11&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=13&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5). [Apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) must be paid the full amount of fringe benefits listed on the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=12&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) for the applicable classification. If the [Administrator](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7662294b14776f1d038a8098c0d75557&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9405839cc766d7965da5e3fcfcc6e3b5&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in [29 CFR 5.16](https://www.law.cornell.edu/cfr/text/29/5.16), [trainees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) will not be permitted to work at less than the predetermined rate for the work performed unless they are [employed](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=072699e8a654fd372ea7bd0074bc5598&term_occur=12&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=5&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=3&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) must be paid at not less than the rate specified in the approved program for the [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5)'s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=18&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5). [Trainees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall be paid fringe benefits in accordance with the provisions of the [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=7&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) program. If the [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=8&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) program does not mention fringe benefits, [trainees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) shall be paid the full amount of fringe benefits listed on the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=14&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) unless the [Administrator](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7662294b14776f1d038a8098c0d75557&term_occur=6&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the [wage determination](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=15&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) which provides for less than full fringe benefits for [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=9&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5). Any [employee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f41487a77a1cb3ff3b9016fb246abba6&term_occur=4&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) listed on the payroll at a [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=11&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=16&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) for the classification of work actually performed. In addition, any [trainee](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=12&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e6b221fda04caa08d6fe0a04540e112e&term_occur=17&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=13&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of [apprentices](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=75de1c6dda2f04f56ad916d6642db4b5&term_occur=10&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5), [trainees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ca42bfa7fae483536e21ea82ea74824a&term_occur=14&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) 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.](https://www.law.cornell.edu/cfr/text/29/part-30.)

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of [29 CFR part 3](https://www.law.cornell.edu/cfr/text/29/part-3), which are incorporated by reference in this [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=18&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5).

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5(a)(1)](https://www.law.cornell.edu/cfr/text/29/5.5) through (10) and such other clauses as the City may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=297143a85aad5f84f1e520bbd5d7e410&term_occur=19&term_src=Title:29:Subtitle:A:Part:5:Subpart:A:5.5) clauses in [29 CFR 5.5](https://www.law.cornell.edu/cfr/text/29/5.5).

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

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

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

(10) Certification of eligibility.

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

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

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

1. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of par­ ties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**(G)** Clean Air Act (42 U.S .C. 7401-767lq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-767lq) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H)** Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S .C. 6201).

**(I)** Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to par­ ties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the 0MB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), " Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**(J)** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or at­ tempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C . 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.