

**Attachment : A**  
**CONTRACTUAL AGREEMENT**

This Agreement, made the TBD day of TBD,2016 , by and between the Housing Authority of the county of Stanislaus, hereinafter called the "OWNER", and

Contractor: TBD  
TBD  
TBD

hereinafter called the "CONTRACTOR";

WITNESSETH:

That whereas the OWNER intends to provide for construction of the Westley Migrant Center (RD) Improvement, hereinafter called the PROJECT, in accordance with the Contract Documents prepared by The Housing Authority of the County of Stanislaus. Now, therefore, the parties of these presents, each in consideration of the Agreement on the part and behalf of the other herein contained, have mutually agreed, and hereby mutually agree, the OWNER, for itself and its successors, and the Contractor for Itself and its successors and assigns, as follows:

1. The Contractor agrees to furnish all the necessary labor, materials, equipment, tools, and services to perform and complete in a workmanlike manner and in strict and full accord with the specifications prepared by the Owner and attached hereto, all work required for the Construction of the PROJECT, in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Contract, including the following Addenda:

Addendum No.	Dated
<u>TBD</u>	<u>TBD</u>
_____	_____
_____	_____

2. The CONTRACTOR agrees that Work under this Agreement shall be commenced upon receipt of written Notice to Proceed, and shall complete all work within 120 calendar days of the commencement of the Contract Time from the date established in the Notice to Proceed.
3. The CONTRACTOR agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the OWNER.
4. The OWNER agrees to pay and the CONTRACTOR agrees to accept as full compensation for the complete performance of this Contract, the amount of:

\$TBD ( TBD dollars) subject to additions and deductions as provided in the Contract Documents; the above amount to cover the cost of all work, services, labor, materials, tools, equipment, plans, and appliances of every name or description to complete the entire Work as specified and the removal of all

debris, temporary work, and appliances. Progress payments will be made in accordance with the General Conditions of the Contract.

5. All work shall be done under the general supervision of the OWNER or its assignee. The OWNER shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of the work, interpretation of the Contract Documents, and all questions as to the acceptable fulfillment of the Contract on the part of the CONTRACTOR.
6. All changes to work that are made or required during the course of construction for unforeseen circumstances other than those that would have been or should have been included during the normal construction procedures will be considered as a Change Order. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. The CONTRACTOR agrees that such equitable adjustment shall be for actual cost of services and materials and shall be limited to no greater than a 12% mark-up for profit and overhead for the total cost of the Change Order
7. The CONTRACTOR further agrees that he and his sureties shall be liable and shall pay to the OWNER, the sum of One Hundred and Fifty Dollars (\$150.00) per day, as fixed, agreed and liquidated damages for each calendar day of delay (not beyond the control of the CONTRACTOR) until the Work is completed and his sureties shall be liable for the amount thereof; provided that the right of the CONTRACTOR to proceed shall not be terminated or the CONTRACTOR charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, Acts of God, or of the Public Enemy, Acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors due to such causes. Provided further, that the CONTRACTOR shall within five days from the beginning of any such delay notify the OWNER in writing, of the causes of any such delay. The OWNER shall ascertain the fact and the extent of the delay and shall extend the time for completing the Contract within the findings of fact justify such extension.

No payment or compensation of any kind shall be made to the CONTRACTOR because of hindrance or delay from any cause in the progress of the Work, whether such delay be avoidable or unavoidable and extension of the time will be granted only as provided above.

8. The CONTRACTOR represents and warrants that:
  - A. It is financially solvent, it is experienced in and competent to perform the type of Work contemplated by this Contract, the facts stated or shown in the papers accompanying its proposal are true, and it is authorized to do business in the State of New York.
  - B. It has carefully examined the Contract Documents and the site and it has satisfied itself from its own investigations as to the nature and location of the work and facilities needed for the performance of the Work, the general and local conditions, and all other matters which may in any way affect the Work.
  - C. The conditions at the site of the Work are such that the Work can be carried on and completed in accordance with the Contract Documents in their present form, and

accordingly, it accepts all conditions as they may be eventually found to exist, and undertakes that all work required because of any unforeseen condition shall be wholly at its own cost and expense, everything in this Contract or the Contract Documents to the contrary, notwithstanding.

- D. The CONTRACTOR agrees to comply with all the Federal, State, Municipal Laws, Ordinances, and Regulations which may in any way affect the Work.
9. The OWNER may withhold from the CONTRACTOR so much of payments due him as may in the judgment of the OWNER be necessary:
- A. To assure the payment of just claims then due and unpaid of any persons supplying labor or materials for the Work.
  - B. To protect the OWNER from loss due to defective work not remedied.
  - C. To protect the OWNER from loss due to injury to persons or damage to property caused by the act or neglect of the CONTRACTOR.
10. The foregoing provisions shall be construed solely for the benefit of the OWNER and shall not require the OWNER to determine or adjust any claims or disputes between the CONTRACTOR and his Subcontractors or material men, or to withhold any moneys for their protection unless the OWNER elects to do so. The failure or refusal of the OWNER to withhold any moneys from the CONTRACTOR shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.
11. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the CONTRACTOR respectively and his partners, successors, assigns, and legal representatives. Neither the OWNER nor the CONTRACTOR shall have the right to assign, transfer, or sublet his interests or obligations hereunder without written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, the day and year first above written.

Housing Authority of the County of Stanislaus

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TITLE

1701 Robertson Road  
Modesto, CA 95351

\_\_\_\_\_  
BUSINESS ADDRESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE



## General Conditions of the Contract for Construction

### Conduct of Work

#### 1. Definitions

(a) "**Contract**" means the contract entered into between the AUTHORITY and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders, these General Conditions of the Contract for Construction, the applicable wage rate determinations from either the U.S. Department of Labor or State, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(b) "**Contracting Officer**" means the person delegated the authority by the AUTHORITY to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the AUTHORITY in all dealings with the Contractor.

(c) "**Contractor**" means the person or other entity entering into the contract with the AUTHORITY to perform all of the work required under the contract.

(d) "**Drawings**" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled **Specifications and Drawings for Construction** herein.

(e) "**State**" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. State has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the AUTHORITY, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of State may be required to authorize changes in the work or for release of funds to the AUTHORITY for payment to the Contractor. Notwithstanding State's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and State.

(f) "**Project**" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(g) "**AUTHORITY**" means the Public Housing Agency or Indian Housing Authority organized under applicable State or tribal law which is a party to this contract.

(h) "**Specifications**" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(i) "**Work**" means materials, workmanship, and manufacture and fabrication of components.

#### 2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the AUTHORITY pursuant to the clause entitled **Availability and Use of Utility Services** herein.

**(b)** The Contractor shall perform on the site, and with its own organization, work equivalent to at least 12 percent unless otherwise indicated of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Authority.

**(c)** At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has Authority to act for the Contractor.

**(d)** The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the AUTHORITY, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

**(e)** The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

**(f)** The Contractor shall confine all operations (including storage of materials) on AUTHORITY premises to areas authorized or approved by the Contracting Officer.

**(g)** The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the AUTHORITY and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

**(h)** The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

### **3. Architect's Duties, Responsibilities, and Authority**

**(a)** The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

**(b)** The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

**(c)** The Architect's duties and responsibilities may include but shall not be limited to:

- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
- (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
- (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
- (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

#### **4. Other Contracts**

The AUTHORITY may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with AUTHORITY employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by AUTHORITY employees.

#### **Construction Requirements**

#### **5. Preconstruction Conference and Notice to Proceed**

- (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the AUTHORITY, its Architect, and other interested parties convened by the AUTHORITY. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The AUTHORITY will provide the Contractor with the date, time, and place of the conference.
- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

#### **6. Construction Progress Schedule**

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled **Inspection and Acceptance of Construction**, herein that the Contractor is not meeting the approved schedule, the

Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the AUTHORITY. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified In the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the **Default** clause of this contract.

## **7. Site Investigation and Conditions Affecting the Work**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the AUTHORITY, as well as from the drawings and specification made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the AUTHORITY.

(b) The AUTHORITY assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the AUTHORITY. Nor does the AUTHORITY assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly Stated in this contract.

## **8. Differing Site Conditions**

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the AUTHORITY within ten days after receipt of such instructions and, in any event, before proceeding with

the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

**(c)** No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

**(d)** No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

## **9. Specifications and Drawings for Construction**

**(a)** The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

**(b)** Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designation", "prescription", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly Stated.

**(c)** Where "as shown, as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless Stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

**(d)** "Shop drawings" means drawings, submitted to the AUTHORITY by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (1.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The AUTHORITY may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

**(e)** If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with order requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for re-submission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the AUTHORITY's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

**(f)** If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any



such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

**(g)** It shall be the responsibility of the Contractor to make timely requests of the AUTHORITY for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

**(h)** The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the AUTHORITY and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

**(i)** This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

#### **10. As-Built Drawings**

**(a)** "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

**(b)** As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

**(c)** This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

#### **11. Material and Workmanship**

**(a)** All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

**(b)** Approval of equipment and materials.

**(1)** The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles.

Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the AUTHORITY right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of re-testing materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Prohibition against use of lead-based paint. The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

## 12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled **Changes** herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the AUTHORITY can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

### **13. Health, Safety and Accident Prevention**

**(a)** In performing this contract, the Contractor shall:

- (1)** Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2)** Protect the lives, health, and safety of other persons;
- (3)** Prevent damage to property, materials, supplies, and equipment; and,
- (4)** Avoid work interruptions.

**(b)** For these purposes, the Contractor shall:

- (1)** Comply with regulations and standards issued by the Secretary of Labor at 29CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91 -54,83 Stat. 96),40 U.S.C.327 et seq.; and,
- (2)** Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

**(c)** The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 24 CFR Part 1904.

**(d)** The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

**(e)** The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the AUTHORITY, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

### **14. Temporary Heating**

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the AUTHORITY in the condition and at the time required by the specifications.

### **15. Availability and Use of Utility Services**

**(a)** The AUTHORITY shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the AUTHORITY or, where the utility is produced by the AUTHORITY, at reasonable rates

determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

**(b)** The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the AUTHORITY, the Contractor shall remove all the temporary connections, distribution lines; meters, and associated paraphernalia.

## **16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements**

**(a)** The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

**(b)** The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

**(c)** The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

**(d)** The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

**(e)** Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

**(f)** New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.

**(g)** No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

**(h)** If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

**(i)** The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

**(j)** The Contractor shall indemnify and save harmless the AUTHORITY from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the AUTHORITY may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

**(k)** The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses

to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

#### **17. Temporary Buildings and Transportation of Materials**

**(a)** Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the AUTHORITY. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

**(b)** The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

#### **18. Clean Air and Water**

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

#### **19. Energy Efficiency**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

#### **20. Inspection and Acceptance of Construction**

**(a)** Definitions. As used in this clause -

**(1)** "Acceptance" means the act of an authorized representative of the AUTHORITY by which the AUTHORITY approves and assumes ownership of the work performed under this contract. Acceptance may partial or complete.

**(2)** "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.

**(3)** "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

**(b)** The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to AUTHORITY inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance With the terms of the contract.

**(c)** AUTHORITY inspections and tests are for the sole benefit of the AUTHORITY and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor

of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) attest the continuing rights of the AUTHORITY after acceptance of the completed work under paragraph j) below.

**(d)** The presence or absence of the AUTHORITY inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

**(e)** The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The AUTHORITY may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The AUTHORITY shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size and performance tests shall be performed as described in the contract.

**(f)** The AUTHORITY may conduct routine inspections of the construction site on a daily basis.

**(g)** The Contractor shall, without charge, replace or correct work found by the AUTHORITY not to conform to contract requirements, unless the AUTHORITY decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

**(h)** If the Contractor does not promptly replace or correct rejected work, the AUTHORITY may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.

**(i)** If any work requiring inspection is covered up without approval of the AUTHORITY, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the AUTHORITY considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

**j)** The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the State of preparedness is as represented, the AUTHORITY will promptly arrange for the inspection. Unless otherwise specified in the contract, the AUTHORITY shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the AUTHORITY'S right under any warranty or guarantee.

## **21. Use and Possession Prior to Completion**

**(a)** The AUTHORITY shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the AUTHORITY intends to take possession of or use. However, failure of the Contracting Officer to list any

item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The AUTHORITY's possession or use shall not be deemed an acceptance of any work under the contract. **(b)** While the AUTHORITY has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the AUTHORITY's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration there for. If parlor possession or use by the AUTHORITY delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

## **22. Warranty of Title**

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

## **23. Warranty of Construction**

**(a)** In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (l) of this clause that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of (1) one year (unless otherwise indicated) from the date of final acceptance of the work. Warranty period for roofing shall be for a period of (3) three years. If the AUTHORITY takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the AUTHORITY takes possession.

**(b)** The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to AUTHORITY owned or controlled real or personal property when the damage is the result of--

**(1)** The Contractor's failure to conform to contract requirements; or

**(2)** Any defects of equipment, material, workmanship or design furnished by the Contractor.

**(c)** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.(also see summary of work)

**(d)** The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

**(e)** If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the AUTHORITY shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

**(f)** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

**(1)** Obtain all warranties that would be given in normal commercial practice;

**(2)** Require all warranties to be executed in writing, for the benefit of the AUTHORITY; and,

**(3)** Enforce all warranties for the benefit of the AUTHORITY.

**(g)** In the event the Contractor's warranty under paragraph (a) of this clause has expired, the AUTHORITY may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the AUTHORITY nor for the repair of any damage that results from any defect in AUTHORITY furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and © above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the AUTHORITY'S rights under the **Inspection and Acceptance of Construction** clause of this contract with respect to latent defects, gross mistakes or fraud.

#### **24. Prohibition Against Liens**

The Contractor is prohibited from placing a lien on the AUTHORITY'S property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

#### **Administrative Requirements**

#### **25. Contract Period**

The Contractor shall complete all work required under this contract within one hundred twenty (120) calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

#### **26. Order of Precedence**

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable State or local law or regulation, the State or local law or regulation shall prevail; provided that such State or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

#### **27. Payments**

(a) The AUTHORITY shall pay the Contractor the price as provided in this contract.

(b) The AUTHORITY shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The AUTHORITY may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to State. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up



this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

**(d)** The Contractor shall submit, on forms provided by the AUTHORITY, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than 7 days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

**(e)** Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that -

- (1)** The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2)** Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3)** This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**(f)** Except as otherwise provided in State law, the AUTHORITY shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect determines that the Contractor's performance and progress are satisfactory, the AUTHORITY may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the AUTHORITY shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

**(g)** The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the AUTHORITY'S interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the AUTHORITY.

**(h)** All material and work covered by progress payments made shall at the time of payment become the sole property of the AUTHORITY, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any

damaged work, or, (2) waiving the right of the AUTHORITY to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the AUTHORITY in the course of their employment, the Contractor shall restore such damaged work without cost to the AUTHORITY and to seek redress for its damage only from those who directly caused it.

**(i)** The AUTHORITY shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the AUTHORITY arising by virtue of this contract, other than claims, in Stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

**(j)** Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

**(k)** The AUTHORITY shall not (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the AUTHORITY to withhold moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this contract.

## **28. Contract Modifications**

**(a)** Only the Contracting Officer has Authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

**(b)** The Contracting Officer may modify the contract unilaterally - (1) pursuant to a specific authorization Stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the AUTHORITY address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

**(c)** When a proposed modification requires the approval of State prior to its issuance (e.g., a change order that exceeds the AUTHORITY'S approved threshold), such modification shall not be effective until the required approval is received by the AUTHORITY.

## **29. Changes**

**(a)** A Change Order is a written order to the Contractor signed by the Owner and the Architect and issued after the execution of the Contract, authorizing a Change in the work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

**(b)** The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by Change Order, and shall execute under the applicable conditions of the Contract Document. Change Orders shall be signed by the Contractor, in addition to the Owner and Architect.

**(c)** The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

2. By unit prices stated in the Contract Documents, Form of Proposal or subsequently agreed upon;
3. By costs to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or,
4. By the method provided in Subparagraph (d).
5. For all changes in the work, the allowance for overhead, profit and bond combined, included in the total cost to the Owner, shall be based upon the following schedule: For the Contractor, for any work performed by his own force, twelve percent (12%) of the cost;  
For each subcontractor involved, work performed by his own forces, twelve percent (12%) of the cost;
6. Change order mark-up fee not to exceed 12%  
For the Contractor, for work performed by his subcontractor, six percent (6%) of the amount due the subcontractor;  
Cost shall be limited to the following: cost of materials, including sales tax and cost of delivery, cost of labor, including Social Security, Old Age and Unemployment Insurance (labor cost may include a prorated share of foreman charge); worker's Compensation Insurance; Rental cost of power tools and equipment.

**(d)** If none of the methods set forth in Clauses 29. (a), (b), (c), is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined by the Architect on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with the schedule set forth above.

In such case, and also under Clauses (a) and (b) above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following:

1. Cost of materials, including sales tax and cost of delivery.
2. Cost of labor, including social security, old age and unemployment insurance and fringe
3. Worker's compensation insurance.
4. Bond premiums.
5. Rental cost of equipment and machinery
6. Additional cost of supervision and field office personnel directly attributable to the change.

**(e)** Pending final determination of cost to the Owner, payments on account shall be made on the Architect's Certificates for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any with respect to that change.

**(f)** The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA/IHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

**(g)** Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

Except as provided in this clause, no order, Statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

**(h)** If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustments and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA/IHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

**(i)** The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written Statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

**(j)** The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

**(k)** The Contracting Officer shall act on proposals within 30 days after the receipt, or notify the Contractor of the date when such action will be taken.

**(l)** Failure to reach an agreement on any proposal shall be a dispute under the clause entitled **Disputes** herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

**(m)** Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

### **30. Suspension of Work**

**(a)** The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the AUTHORITY.

**(b)** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

**(c)** A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount Stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### **31. Disputes**

**(a)** "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract,

unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

**(b)** All disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

**(c)** All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the AUTHORITY against the Contractor shall be subject to a written decision by the Contracting Officer.

**(d)** The Contracting Officer shall, within 60 days (unless otherwise indicated) after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

**(e)** The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the AUTHORITY in accordance with the AUTHORITY's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days (unless otherwise indicated) after receipt of the Contracting Officer's decision.

**(f)** The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

### **32. Default**

**(a)** If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the AUTHORITY may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the AUTHORITY resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the AUTHORITY in completing the work.

**(b)** The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if--

**(1)** The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the AUTHORITY or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the AUTHORITY, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

**(2)** The Contractor, within 10 days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of

the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the AUTHORITY.

### **33. Liquidated Damages**

(a) If the contractor fails to complete the work within the time specified in the clause entitled Default of this Contract, both the Contractor and the AUTHORITY agree that the AUTHORITY will suffer damages for the delay in completion of any phase of the work and that the actual amount of AUTHORITY damages would be extremely difficult and impracticable to calculate or otherwise ascertain. **By placing their initials here, Contractor\_\_\_\_\_ and the AUTHORITY\_\_\_\_\_** agree that such damages shall be liquidated and that the Contractor shall pay the AUTHORITY the sum of **\$150.00** for each and every day and every unit that is not completed of any phase of the work is delayed beyond the time set forth for the completion of that phase of the work unless the Contractor's delay is excused under another clause in this Contract. Contractor and AUTHORITY further agree that the amount of liquidated damages is reasonable considering all the circumstances existing on the date of the execution of this Contract and that these liquidated damages are a reasonable approximation by the Contractor and the AUTHORITY in view of their inability to calculate actual damages.

(b) If the AUTHORITY terminates the Contractor's right to proceed, the assessment of the liquidated damages shall continue until such reasonable time as may be required for final completion of the work together with any increased cost incurred by the AUTHORITY in completing the work.

(c) If the AUTHORITY does not terminate the Contractor's right to proceed, liquidated damages will be assessed until the Contractor's work is completed and accepted by the AUTHORITY.

(d) The imposition of liquidated damages by the AUTHORITY shall not preclude other AUTHORITY claims for damages against the Contractor caused other than by Contractor's delay in completion of the work.

### **34. Termination for Convenience**

(a) The Contracting Officer may terminate this contract in whole, or in part whenever the Contracting Officer determines that such termination is in the best interest of the AUTHORITY. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the AUTHORITY shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the AUTHORITY of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the AUTHORITY or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the AUTHORITY; and (5) an amount consulting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within 60 days (unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the **Disputes** clause of this contract.

### **35. Assignment of Contract**

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the AUTHORITY under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

### **36. Insurance**

(a) Before commencing work, the Contractor and each subcontractor shall furnish the AUTHORITY with endorsements of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with State or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than one million dollars per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under Section 3 below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than one million dollars per occurrence.

(b) Before commencing work, the Contractor shall furnish the AUTHORITY with an endorsement of insurance evidencing that Builder's Risk (fire and extended coverage) insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the AUTHORITY as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the AUTHORITY shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the AUTHORITY. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the super-structure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the AUTHORITY. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the AUTHORITY. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the AUTHORITY'S existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the

construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All endorsements of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

### **37. Subcontracts**

**(a)** Definitions. As used in this contract -

**(1)** "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and serves for the performance of the prime contract or a subcontract.

**(2)** "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

**(b)** The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a State program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the State in which the work under this contract is to be performed.

**(c)** The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

**(d)** The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

**(e)** Nothing contained in this contract shall create any contractual relationship between any subcontractor and the AUTHORITY or between the subcontractor and State.





# **USDA RURAL DEVELOPMENT SUPPLEMENTAL PROVISIONS**

## **1. USDA RURAL DEVELOPMENT APPROVALS**

- 1.1 The OWNER is seeking financial assistance for the project from the USDA Rural Development. If such assistance is granted, USDA approval of the CONTRACT, CONTRACT CHANGE ORDERS, and pay estimates will be required, but neither USDA, nor any of its departments, entities, or employees is a party to this CONTRACT. The CONTRACT shall not be effective unless and until approved by a delegated representative of USDA Rural Development.

## **2. CONTRACT CHANGE ORDERS**

- 2.1 All changes which affect the cost or time of the construction of the PROJECT must be authorized by means of a CHANGE ORDER. The CHANGE ORDER will include extra WORK, WORK for which quantities have been altered from those shown in the BIDDING schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the BIDDING schedule because of final measurements. All changes should be recorded on a CHANGE ORDER as they occur. Each CHANGE ORDER must contain complete and detailed justification for all items addressed by the CHANGE ORDER. All CHANGE ORDERS must be executed on Form RD 1924-7, "Contract Change Order," and they must be approved by the USDA.

## **3. PAYMENT TO CONTRACTOR**

- 3.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), CONTRACTOR will submit to the ARCHITECT/ENGINEER (A/E) a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the A/E may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, such as paid invoices, or other written evidence satisfactory to the OWNER; as will establish the OWNER's title to the material and equipment and protect the OWNER's interest therein, including applicable insurance. The A/E will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of the payment, and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and

resubmit the partial payment estimate. The OWNER will, within thirty (30) days of presentation of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate.

- 3.2 Payments will not be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the CONTRACTOR.
- 3.3 All progress payments and the final payment shall be processed on Form RD 1924-18, "Partial Payment Estimate," and all payments shall be approved by USDA.

#### **4. CONTRACT SECURITY**

- 4.1 The CONTRACTOR shall within fifteen (15) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance BOND and a Payment BOND in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a SURETY on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of surety companies accepted on Federal Bonds, CONTRACTOR shall within twenty (20) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other SURETY or SURETIES as may be satisfactory to the OWNER. The CONTRACTOR shall pay the premiums on such BOND. No further payment shall be deemed due nor shall be made until the new SURETY or SURETIES shall have furnished an acceptable BOND to the OWNER.

#### **5. INSURANCE**

- 5.1 The CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the WORK being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the WORK and CONTRACTOR's other obligations under the CONTRACT DOCUMENTS, whether it is to be performed by CONTRACTOR, any SUBCONTRACTOR or SUPPLIER, or by anyone directly or indirectly employed by any of them to perform any of the WORK, or by anyone for whose acts any of them may be liable:

- 5.1.1 Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 5.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
  - 5.1.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than CONTRACTOR's employees;
  - 5.1.4 Claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
  - 5.1.5 Claims for damages, other than to the WORK itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  - 5.1.6 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- 5.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at thirty (30) days prior WRITTEN NOTICE has been given to the OWNER.

## **6. PRECONSTRUCTION CONFERENCE**

- 6.1 Prior to the start of construction, the OWNER will schedule a preconstruction conference. At the conference, the A/E will review the planned development with the OWNER, resident inspector, CONTRACTOR, USDA and other interested parties.

## **7. INSPECTIONS**

- 7.1 The OWNER, A/E, project inspector, and a designated representative of the USDA will make a prefinal inspection of the WORK. This inspection shall be made as soon as practical after the CONTRACTOR has notified the OWNER in writing that the WORK is ready for this inspection. The prefinal inspection shall be made prior to acceptance of any portion of the WORK as being substantially complete and prior to filing of the Notice of Completion.

- 7.2 A final inspection of all the work will be made by the OWNER, A/E, CONTRACTOR, and a USDA representative prior to acceptance of the WORK.

## **8. GUARANTEE**

- 8.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defect including the repairs of the damage of other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect throughout the guarantee period.

## **9. INDEMNIFICATION**

- 9.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the A/E and the USDA and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- 9.2 In any and all claims against the OWNER or the A/E or the USDA, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for those acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under worker's compensation acts, disability benefit acts or other employee benefit acts.

## **10. CONFLICT OF INTEREST**

- 10.1 CONTRACTOR may not knowingly contract with a SUPPLIER or manufacturer if the individual or entity who prepared the plans and SPECIFICATIONS has a corporate or financial affiliation with the SUPPLIER or manufacturer.

10.2 OWNER's officers, employees, or agents shall not engage in the award or administration of this CONTRACT if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ any of the above, has a financial interest in CONTRACTOR. OWNER's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from CONTRACTOR or SUBCONTRACTORS.

## **11. GRATUITIES**

11.1 If OWNER finds after a notice and hearing that CONTRACTOR, or any of CONTRACTOR's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of OWNER or USDA in an attempt to secure this CONTRACT or favorable treatment in awarding, amending, or making any determinations related to the performance of this CONTRACT, OWNER may, by WRITTEN NOTICE to CONTRACTOR, terminate this CONTRACT. OWNER may also pursue other rights and remedies that the law or this CONTRACT provides. However, the existence of the facts on which OWNER bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this CONTRACT. In the event this CONTRACT is terminated, OWNER may pursue the same remedies against CONTRACTOR as it could pursue in the event of a breach of this CONTRACT by CONTRACTOR. As a penalty, in addition to any other damages to which it may be entitled by law, OWNER may pursue exemplary damages in an amount (as determined by OWNER) which shall not be less than three nor more than ten times the costs CONTRACTOR incurs in providing any such gratuities to any such officer or employee.

## **12. AUDIT AND ACCESS TO RECORDS**

12.1 For all negotiated CONTRACTS and negotiated CHANGE ORDERS (except those of \$10,000 or less), OWNER, USDA, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR, which are pertinent to the CONTRACT, for the purpose of making audits, examinations, excerpts and transcriptions. CONTRACTOR shall maintain all required records for three years after final payment is made and all other pending matters are closed.

## **13. SMALL, MINORITY AND WOMEN'S BUSINESSES**

13.1 If the CONTRACTOR intends to let any subcontracts for a portion of the WORK, the CONTRACTOR shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever

they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) the CONTRACTOR is encouraged to procure goods and services from labor surplus area firms.

#### **14. ANTI-KICKBACK**

14.1 CONTRACTOR shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This act provides that CONTRACTOR shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. OWNER shall report all suspected or reported violations to USDA.

#### **15. VIOLATING FACILITIES**

15.1 Where this Contract exceeds \$100,000 CONTRACTOR shall comply with all the requirements of the Clean Air Act (42 U.S.C. §7414 ) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

#### **16. STATE ENERGY POLICY**

16.1 CONTRACTOR shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

## **17. EQUAL OPPORTUNITY REQUIREMENTS**

- 17.1 If this CONTRACT exceeds \$10,000, CONTRACTOR shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 17.2 CONTRACTOR's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the CONTRACT is 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 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 goal of meeting 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 total work hours performed.
- 17.3 CONTRACTOR shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier of 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 subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the CONTRACT is to be performed.

## **18. RESTRICTIONS ON LOBBYING**

- 18.1 CONTRACTOR and each subcontractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable USDA regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, CONTRACTOR must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this CONTRACT.

## **19. ENVIRONMENTAL REQUIREMENTS**

When constructing a project involving trenching and/or other related earth excavations, CONTRACTOR shall comply with the following environmental constraints:



- 19.1 Wetlands-- When disposing of excess, spoil, or other construction materials on public or private property, CONTRACTOR shall not fill in or otherwise convert wetlands.
- 19.2 Floodplains-- When disposing excess, spoil, or other construction materials on public or private property, CONTRACTOR shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain Maps.
- 19.3 Historic Preservation-- Any excavation by CONTRACTOR that uncovers an historical or archaeological artifact shall be immediately reported to OWNER and a representative of USDA. Construction shall be temporarily halted pending the notification process and further directions issued by USDA after consultation with the State Historic Preservation Officer (SHPO).
- 19.4 Endangered Species-- CONTRACTOR shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of CONTRACTOR, CONTRACTOR will immediately report this evidence to OWNER and a representative of USDA. Construction shall be temporarily halted pending the notification process and further directions issued by USDA after consultation with the U.S. Fish and Wildlife Service.

**ATTACHMENT TO CONTRACT**

This attachment is to the contract made and entered into on \_\_\_\_\_, by and between

\_\_\_\_\_ hereinafter called "OWNER", and

\_\_\_\_\_ hereinafter called "CONTRACTOR."

This contract is for that work described in the contract documents as \_\_\_\_\_

\_\_\_\_\_.

The United States of America, as potential lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, hereby concurs in the form, content and execution of this contract.

This contract shall not be in full force and effect unless and until concurred with by a delegated representative of USDA Rural Development.

U.S. Department of Agriculture

**RURAL DEVELOPMENT:**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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