

December 2, 2021

**HOUSING AUTHORITY OF THE CITY OF PUEBLO
201 S. Victoria Avenue
Pueblo, CO 81003**

ADDENDUM 1

**BID NUMBER: I.F.B. 21-548-AAP
PROJECT DESCRIPTION: ASBESTOS ABATEMENT – CRAWFORD TOWNHOMES
LOCATION: SANGRE DE CRISTO APARTMENTS, PUEBLO, CO**

THIS ADDENDUM CONTAINS 3 PAGE(S) 4 ATTACHMENT(S) 0 DRAWING(S)

This Addendum is issued by the Owner for all known bidders. Bidders shall attach this Addendum to the Scope of Work and acknowledge receipt on the Bid Form. All information and instructions given herein shall become a part of the Contract documents.

SPECIFICATIONS ITEMS

ITEM NO. 1

Add the following:
Distribution List - (**Attachment #1.**)

DISTRIBUTION LIST

ITEM NO. 2

Modify the following:

Remove Owner and Contractor Agreement in its entirety and replace with the attached Owner and Contractor Agreement (**Attachment #2.**)

OWNER AND CONTRACTOR
AGREEMENT

ITEM NO. 3

Modify the following:

Remove General Conditions for Construction Contracts in its entirety and replace with the attached General Conditions for Construction Contracts (**Attachment #3.**)

GENERAL CONDITIONS
FOR CONSTRUCTION
CONTRACT

ITEM NO. 4

Clarify the following:

Demolition is NOT part of this contract. Demolition will be bid as a separate job.

GENERAL REQUIREMENTS
SUMMARY OF WORK
SECTION 01010

December 2, 2021

ITEM NO. 5

Add the following:

Removal of refrigerators and stoves to be done by Owner prior to Notice to Proceed issuance.

GENERAL REQUIREMENTS
SUMMARY OF WORK
SECTION 01010

ITEM NO. 6

Clarify the following:

A request for a new classification will be sent to DOL for proper wage rate upon contract issuance.

DAVIS-BACON WAGE RATES

ITEM NO. 7

Clarify the following:

The carpenter wage rate was used as an example for bidding purposes if needed. Contractors to pay normal wage for the work. A new classification could be more or less than your normal wage. Contractor is responsible for any higher wage rate established.

DAVIS-BACON WAGE RATES

ITEM NO. 8

Clarify the following:

Selective demolition performed by Abatement Contractor to expose asbestos containing material shall be disposed of offsite. Construction materials may include, but are not limited to, drywall, insulation, wall furring, doors, water heaters, cabinets, plumbing and mechanical equipment.

GENERAL REQUIREMENTS
SUMMARY OF WORK
SECTION 01010
B. SCOPE OF WORK #7

ITEM NO. 9

Clarify the following:

The Housing Authority of the City of Pueblo WILL NOT accept bids on a per building basis, nor will HACP award multiple contracts to complete the work to meet the 90-day deadline.

INFORMATION FOR BIDDERS

ITEM NO. 10

Modify the following:

Remove Bid for Lump Sum Contract in its entirety and replace with the attached Bid for Lump Sum Contract (**Attachment #4**)

BID FOR LUMP SUM
CONTRACT

December 2, 2021

ITEM NO. 11

Modify the following:

ASBESTOS INSPECTION
REPORTS

Asbestos Inspection Reports from All-Phase Environmental for Buildings 42-F, 39-C, and 40-A have been updated and reposted on the HACP Website.

ITEM NO. 12

Add the following:

SUMMARY OF WORK
B. SCOPE OF PROJECT

Demolition notification application to be issued by 12/20/2021.
Notice to Proceed to be issued no later than the week of January 3, 2022 along with all permits.

ITEM NO. 13

Clarify the following:

ASBESTOS INSPECTION
REPORTS

The need of oversight/consulting during the abatement activities will be decided by the Owner after award and review of the Abatement Design. All-Phase will be doing all visuals, air monitoring and oversight if needed.

ITEM NO. 14

Clarify the following:

ASBESTOS INSPECTION
REPORTS

Cost for clearances regarding a failure will include visual fails and final air clearance fails. Due to the unknown plan/design, the range of cost could be ~\$150 - \$250 per visual fail if AMS must be performed at a later time/date and ~\$650 - \$1000 for a final air clearance fail. Again, this is a range at this time as it is unknown how many and/or large the containments will be (i.e., they may require 2 AMS personnel to perform).

HOUSING AUTHORITY OF THE CITY OF PUEBLO

PROJECT NUMBER: I.F.B. 21-548-AAP

PROJECT DESCRIPTION: Asbestos Abatement - Crawford Townhomes

WALK-THRU DATE: Tuesday, November 30, 2021 at 10:00 a.m. Mountain Time

LOCATION: Sangre de Cristo Apts., Pueblo CO

BID DUE DATE: Thursday, December 9th, 2021 at 11:00 a.m. Mountain Time

LOCATION: CMF, 201 S. Victoria Ave., Pueblo, CO

DISTRIBUTION LIST - SPECIFICATIONS AND PLANS

CONTRACTOR/VENDOR NAME & ADDRESS	EMAIL ADDRESS	PHONE NO.	DATE	BY	NOTES
Acumen Environmental Services Colorado Springs, CO	kerri@acumenenv.com angela@acumenenv.com	719-432-5774	11/19/2021	FM	Emailed
Advantage Environmental, Inc. Denver, CO	eric@advantageabatement.com	303-500-8631	11/19/2021	FM	Emailed
Apex Environmental Services (affiliated w/Demo by Phoenix)	rsoyars@apexenvironmentalservices.com	720-486-2824 720-829-5608	11/19/2021	FM	Emailed
ARC Abatement 7180 W. 117th Ave., Ste. E., Broomfield, CO 80020	chrisgrosskoph@arcabatement.com mikegriffin@arcabatement.com	303-635-6800 303-507-5811	11/19/2021	FM	Emailed
Associated Insulation Inc. Colorado Springs, CO	gtacha@yahoo.com	303-500-8632	11/19/2021	FM	Emailed
Colorado Hazard Control LLC Pueblo, CO	snelson@coloradohazard.com	719-547-2785	11/19/2021	FM	Emailed
Demo by Phoenix	jduran@demobyphoenix.com		11/19/2021	FM	Emailed
Environmental Abatement Southwest, Inc. Colorado Springs, CO	lvid@easwi.com	719-570-9676	11/19/2021	FM	Emailed
ESA 6700 E. 50th Ave., Commerce City, CO	dave.neumyer@esasite.com	303-991-1280	11/19/2021	FM	Emailed
Excel Environmental 1852 Jasper St., Unit E, Aurora, CO 80011	tcase@excelcorp.net	303-577-9933	11/19/2021	FM	Emailed
Herron Environmental 7261 W. Hampden Ave, Lakewood, CO 80227	herronadmin@comcast.net	303-763-9639	11/19/2021	FM	Emailed
Iron Mountain Demo & Roll-Off 75 Talamine Ct., Ste. A, Colo. Spgs. 80907	mdyer@ironmountaincs.com	719-323-0961	11/19/2021	FM	Emailed
Mac-Bestos, Inc. Englewood, CO	mboffice@macbestos.com	303-534-2757	11/19/2021	FM	Emailed
NorthStar Demo & Remediation 5150 Fox St., Denver, CO 80216	jrichardson@northstar.com	303-727-9205 720-435-7086	11/19/2021	FM	Emailed
Orion Environmental 4875 Newport St., Commerce City, CO 80022	orion@orionsvcs.com	303-993-2750	11/19/2021	FM	Emailed
Premier Environmental, LLC	h.schenker@premierenviro.net	520-909-0444	11/19/2021	FM	Emailed
Premier Environmental, LLC	c.mortenson@premierenviro.net	303-993-8121	11/19/2021	FM	Emailed
RAM Environmental Services			11/19/2021		
Region 8 Enviro, LLC Colorado Springs, CO	tony@r8enviro.com	303-919-7596	11/19/2021	FM	Emailed
SB Advanced Remediation Service, Inc. Colorado Springs, CO	shawnr@arscolorado.com	719-540-6550	11/19/2021	FM	Emailed
Construct Connect	lindsey.wehrle@constructconnect.com		11/19/2021	FM	Emailed
Construct Reporter	jane@constructionreporter.com	505-243-9793	11/19/2021	FM	Emailed
Cyclone Kleen Up 890 S. Cienaga Dr. Pueblo West CO 81007	ramey@cyclonekleenup.com	719-299-3887	11/29/2021	JV	Emailed



**EXECUTIVE DIRECTOR
Steven L. Trujillo**

201 S. Victoria Ave., Pueblo, CO 81003-3434
Phone (719) 542-6741 (Voice/TTY) (800) 659-2656 Fax (719) 546-5395

SAMPLE

**I.F.B. 21-548-AAP
OWNER AND CONTRACTOR AGREEMENT**

This AGREEMENT is made this ____ day of _____ in the year of Two Thousand Twenty One BETWEEN the Owner: **Housing Authority of the City of Pueblo** located at 201 S. Victoria Ave., Pueblo, CO 81003 and the Contractor: _____ located at _____.

The Project is for the: **Asbestos Abatement – Crawford Townhomes, Pueblo, Colorado, dated _____, 2021.**

The Project Owner is: Housing Authority of the City of Pueblo
Its Agents and Employees
201 S. Victoria Avenue
Pueblo, CO 81003

The Contracting Officer is: Housing Authority of the City of Pueblo
Steven L. Trujillo
201 S. Victoria Avenue
Pueblo, CO 81003

The Owner and Contractor agree as set forth below:

**ARTICLE 1
THE CONTRACT DOCUMENTS**

1.1 The Contract Documents consist of this Agreement, General Conditions of the Contract, Drawings, Specifications, addenda issued prior to execution of this Agreement, Notice of Award, Notice to Proceed, and other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents other than Modifications appears in Article 9.

ARTICLE 2
THE WORK OF THIS CONTRACT

2.1 The Contractor shall execute the entire Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date the Contractor is issued a Notice to Proceed by the Owner. If the Owner issues a Notice to Proceed to Contractor it shall identify the portion of the Work described in the Contract Documents which may be performed by Contractor and the value of that Work. A Notice to Proceed shall specify when the Work identified therein shall be substantially complete. If a Notice to Proceed is issued by Owner prior to the substantial completion date set forth in any Notice to Proceed, the substantial completion date set forth in that Notice to Proceed shall be of no force or effect and all of the Work under the Contract shall be substantially complete when provided in Paragraph 3.2.

3.2 The Contractor shall diligently prosecute the Work and achieve Substantial Completion of the entire work no later than **90 calendar days from the date of the Notice to Proceed** after the date of the Notice to Proceed. If the entire work is not substantially complete within the Contract Time as adjusted by any Change Orders, the Contractor acknowledges that the Owner will suffer damages, which damages shall be difficult to quantify, and shall pay liquidated damages to Owner and not as a penalty the amount of **\$5,000** for each calendar day beyond the date of Substantial Completion except to the extent additional time has been granted to the Contractor under this Agreement.

ARTICLE 4
CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's proper performance of the Contract and the completion of the Work. The Contract Sum of:

_____ **and /100 Dollars (\$**
_____) subject to authorized additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the project which is described in the Contract Documents and are hereby accepted by the Owner.

DEDUCT ALTERNATE NO. 1

Remove non-friable, asbestos-containing 12" x 12" off white/tan floor tile and yellow mastic over tan/multi-colored floor tile and black mastic. The floor tile and yellow mastic are negative for the presence of asbestos while the tan/multi-colored tile and black mastic contains between 4-20% Chrysotile asbestos. The material was observed on the floors throughout the 1st and 2nd levels of the subject building.

PRICE: \$ _____

UNIT PRICES

Unit Price complete including materials, labor, overhead and profit.

- Remove asbestos containing TSI heatboard: _____ per sq. ft.
- Deduct asbestos containing TSI heatboard: _____ per sq. ft.
- Remove asbestos containing roll textured plaster: _____ per sq. ft.
- Deduct asbestos containing roll textured plaster: _____ per sq. ft.
- Remove asbestos containing 12" x 12" VCT floor tile/mastic: _____ per sq. ft.
- Deduct asbestos containing 12" x 12" VCT floor tile/mastic: _____ per sq. ft.
- Remove asbestos containing texture on concrete: _____ per sq. ft.
- Deduct asbestos containing texture on concrete: _____ per sq. ft.
- Remove asbestos containing smooth plater: _____ per sq. ft.
- Deduct asbestos containing smooth plater: _____ per sq. ft.
- Remove and dispose of mercury containing thermostat: _____ ea.

ARTICLE 5 **PROGRESS PAYMENTS**

5.1 Based upon Applications for Payment including all supporting documentation submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each application for Payment shall be one calendar month ending on the last day of the month. **Retainage of ten (10%) percent** of the amount of progress payments shall be withheld until completion and acceptance of all work under the Contract.

5.3 Provided an Application for Payment including all supporting documentation is received by the Owner no later than the 5th day of a month, the Owner shall make payment to the Contractor no later than **30** days after receipt of the Application of Payment. If an application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner no later than forty five (**45**) days after the Owner receives the Application for Payment.

5.4 Each Application for Payment including all supporting documentation shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner:

5.5.1 A current Sworn Statement from the Contractor setting forth all sub-contractors and materialmen with whom the Contractor has subcontracted, the amount of such subcontract, the amount requested for any sub-contractor or materialman in the Application for Payment and the amount to be paid to the Contractor from such Progress Payment, together with a current, duly executed waiver of mechanics' and materialmen's liens from the Contractor establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;

5.5.2 Commencing with the second (2nd) Application for Payment submitted by the Contractor,

duly executed waivers of mechanic's and materialmen's liens from all sub-contractors, materialmen and, when appropriate, from lower tier sub-contractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment, plus sworn statements from all sub-contractors, materialmen and, where appropriate, from lower tier sub-contractors, covering all amounts described in this Paragraph 5.5.2.

5.5.3 Such other information, documentation and materials as the Owner may require.

5.6 Subject to the Provisions of the Contract Documents, the amount of each Progress Payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included as provided in subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order.

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retaining of ten percent (10%).

5.6.3 Subtract the aggregate of previous payments made by the Owner, and

5.6.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances.

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payment to one hundred percent 100% of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with subparagraph 9.10.3 of the General Conditions.

ARTICLE 6 **FINAL PAYMENT**

6.1 Final payment, constituting the entire unpaid balance of the Contract Sum including the retainage, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor in accordance with the Contract Documents, except for the Contractor's responsibility to correct nonconforming Work as provided in subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment, and (2) a final Certificate for Payment has been issued by the Owner; such final payment shall be made by the Owner not more than 30 days after the issuance of the Owner's final Certificate for Payment.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate as provided by subparagraph 13.6.1 of the General Conditions.

7.3 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute the Agreement and the final completion of the Work;

a) that it and its sub-contractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations, hereunder;

b) that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder;

c) that it is authorized to do business in the State of Colorado and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;

d) that its execution of this Agreement and its performance thereof is within its duly authorized powers;

e) that its duly authorized representative has visited the site of the Project, is familiar with the local and special conditions under which the Work is to be performed and has correlated on-site observations with the requirements of the Contract Documents; and

f) that it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project, and that it will perform the Work with the care, skill and diligence of such a contractor.

g) The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor's liability and hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement, including without limitation, this Paragraph 7.3.1, shall survive the final completion of the Work or the earlier termination of this Agreement.

h) The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

7.4 **Hold Harmless**. Contractor agrees to indemnify, defend and hold harmless the Housing Authority of the City of Pueblo, Colorado and their agents, commissioners, and its employees from and against any and all liability, claims, demands, and expenses, including court costs and reasonable attorney fees, on account of any injury, loss or damage which arise out of or are in any manner connected with the work to be performed under this agreement if such injury, loss or damage is

caused by the negligent act, error or omission of the Contractor, any Sub-contractor of the Contractor, any material supplier of the Contractor, or any officer, employee or agent of the Contractor. These obligations shall not apply to damages which the Owner shall become liable by final judgment to pay to a third party as the result of the negligence of the Owner.

ARTICLE 8
TERMINATION OR SUSPENSION

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9
ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Agreement between Owner and Contractor.

9.1.2 The Bidding and Contract Documents of the Contract are those contained in the Project Manual dated **November 19, 2021** and are as follows:

BIDDING REQUIREMENTS

Invitation to Bidders
Information for Bidders
Instructions to Bidders
Form of Non-Collusive Affidavit
Davis-Bacon Wage Rates
Bid for Lump Sum Contract

CONTRACT DOCUMENTS

Notice of Award
Owner & Contractor Agreement
Notice to Proceed
General Conditions of the Contract for Construction

TECHNICAL SPECIFICATIONS

DIVISION 1 GENERAL REQUIREMENTS

Summary of Work	01010	3 pgs.
Project Management and Coordination	01310	5 pgs.
Substitutions & Addenda	01320	1 pg.
Temp. Facilities, Separate Primes	01506	2 pgs.
Cleaning	01710	1 pg.
Project Closeout	01720	2 pgs.

DRAWINGS

Site Plan Sheet S1

ATTACHMENTS

Asbestos Abatement – Scope of Work per Building

Available at the following link:

[Business Opportunities | Pueblo Housing Authority \(hapueblo.org\)](http://hapueblo.org)

Bldgs. 42-F, 2-F, 14-E, 15-D, 16-A, 17-G, 38-C, 39-C, 40-A
41-F, 43-I, 45-I, 46-I
(13 Buildings)

1,248 pgs.

This Agreement entered into as of the day and year first written above.

**Owner: Housing Authority of the
City of Pueblo**

Contractor:

By: _____
Steven L. Trujillo, Contracting Officer

By: _____

Date: _____

Title: _____

Date: _____

The foregoing instrument was acknowledged before me this _____ day of
_____, 20____ A.D. by Steven L. Trujillo and _____

Witness by my hand and official seal

My commission expires _____

Notary Public

**I.F.B. 21-548-AAP
ASBESTOS ABATEMENT – CRAWFORD TOWNHOMES
@ Sangre de Cristo Apartments, Pueblo, Colorado**

TABLE OF CONTENTS

General Conditions for Construction Contracts

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE I – GENERAL PROVISIONS**1.1 BASIC DEFINITIONS****1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or Invitation to Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and Contractor, (2) between the Owner and a sub-contractor or sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Owner's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled by the Owner for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or both do not sign all the Contract Documents, the Owner shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local and any special conditions under which the Work is to be performed and any special correlated personal observations with requirements of the Contract Documents. The Contractor and each sub-contractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Paragraph 10.1.2, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any sub-contractor to comply with the requirements of this Paragraph 1.2.2.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among sub-contractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF OWNER'S DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications, and other documents prepared by the Owner are instruments of the Owner's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any sub-contractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Owner, and unless otherwise indicated by the Owner, shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Owner, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any sub-contractor, sub-subcontractor, or material or equipment supplier or other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Owner. The Contractor, sub-contractor, sub-subcontractors and material or equipment supplies are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Owner appropriate to and for use in the execution of their Work under the Contract Documents.

All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Owner. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not be construed as publication in derogation of the Owner's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, sub-paragraphs and Clauses in the document.

1.5 INTERPRETATION

1.5.1 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 - OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or in the Owner's reasonable judgement fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Owner's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Owner. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.5 EXTENT OF OWNER RIGHTS

2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 - CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to subparagraph 2.2.1 and shall at once report to the Owner errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.2.4 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations of the Work. Any errors due to the Contractor's failure to verify all grades, elevations, locations and/or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.5 Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Paragraph 4.3.6, the Contractor represents that the Contract Documents are sufficiently complete and detailed for the Contractor to perform the work required to produce the results intended in the Contract Documents and comply with all the requirements of the Contract Documents.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, sub-contractors and their agents and employees, and any entity or other persons performing portions of the Work.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner in the Owner's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline, safety, and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials, and equipment.

3.6 TAXES

3.6.1 City of Pueblo Taxes. The Contractor shall pay all City of Pueblo sales, consumer, use and other similar taxes required by law.

3.6.2 The Contract between the Owner and The Contractor and the Contract between the Contractor and each sub-contractor shall require that the City of Pueblo sales and use tax be paid by the Contractor or sub-contractor

on all pursuance of the Contract. The City law requires that the tax be paid on all material built into the building regardless of where purchased.

3.6.3 An amount sufficient to cover the payment of the above taxes must be included in each bid submitted. Contractor shall make certain that all sub-contractors have included these amounts of their bids, and it shall be the duty of the prime Contractor to make certain that all required sales and use taxes are paid by both himself and by his sub-contractors, wherever they may be located.

3.6.4 If materials are purchased outside the limits of the City of Pueblo, Use Tax returns must be filed with the City of Pueblo Finance Department. No Sales Tax License is necessary to make these payments.

3.6.5 The Contractor shall comply with and shall require all his sub-contractors to comply with all of the provisions and amendments of the Act of Congress approved August 14, 1934, known and cited as the "Social Security Act."

3.6.6 The Contractor shall indemnify and save harmless the Owner of and from any and all claims and demands made against him by virtue of failure of the Contractor or any sub-contractors to comply with the provisions of all said laws acts, and/or amendments.

3.6.7 Prepayment of City Sales and Use Tax (*This section applies only to public improvement construction projects over \$1,000,000*). The Contractor shall make application for, and prepayment of, City sales and use tax on the estimated percentage basis being forty percent (40%) of the total Project bid as awarded including Base Bid plus those Alternates selected. Application and prepayment shall be made within fourteen (14) days of the date authorized to proceed with construction of the Project as set forth in the Notice to Proceed. All applications and prepayments shall be coordinated directly with City's Division of Sales and Use Tax, Attention: Tax Audit Manager, 1 City Hall Place, Pueblo, Colorado 81003.

3.7 PERMITS, FEES, AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for any permits required by the Pueblo Regional Building Department and any other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

3.7.1.1 The Contractor shall not include in his bid the cost of the water meter, the tap fee, the setting fee, and any other charges required by the Water Board, to provide the services required. The Owner shall pay for these fees.

3.7.1.2 The Contractor shall not include in his bid the cost of the gas meter, the tap fee, setting fee, and any other charges required by this utility company to provide the service. The Owner shall pay for these fees.

3.7.1.3 The Contractor shall not include in his bid the charges required by the power company for installation of overhead or underground services shown on the drawings, charges for setting transformers, meters, and/or other charges relating to this project. The Owner shall pay these fees and charges.

3.7.1.4 Should any laws, codes, ordinances, or regulations be changed during performance of this Contract, the Owner will request in writing a proposal from the Contractor for making the required changes. Such required changes shall be made only upon written order as required for other changes in Work.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with

applicable laws, statutes, ordinances, building codes, and rules and regulations unless such laws, statutes, ordinances, Building Codes and rules and regulations bear upon performance of the Work.

However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Owner and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contract makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- .2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall continuously be at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, within (5) calendar days of the Notice to Proceed, shall prepare and submit for the Owner's and Owner's information a Contractor's Construction Schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Contractor's Construction Schedule and allows the Owner reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and shall be delivered to the Owner for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a sub-contractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Owner is subject to the limitations of subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Owner. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submittal and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, samples or similar submittals, to revisions other than those requested by the Owner on previous submittals.

3.12.10 Informational submittals upon which the Owner is not expected to take responsive action may be so

identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitations of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Building in the event of partial occupancy, as more specifically describe in Paragraph 9.9.

3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Owner access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer(s) is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts, errors, or omissions of the Contractor, a sub-contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a sub-contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a sub-contractor under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Owner, the Owner's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Owner, the Owner's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 OWNER

4.1.1 The Owner is the person lawfully licensed to practice Ownerure or an entity lawfully practicing Ownerure identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Owner as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Owner. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Owner, the Owner shall appoint an Owner against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the

former Owner.

4.2 OWNER'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Owner will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Owner will advise and consult with the Owner. The Owner will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Owner will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an Owner, the Owner will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, sub-contractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Owner. Communications by and with the Owner's consultants shall be through the Owner. Communications by and with sub-contractors and materials suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Owner's observations and evaluations of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Owner will have authority to reject Work which does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, the Owner will have authority to require additional inspection or testing of the Work in accordance with subparagraph 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Contractor, sub-contractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Owner will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Owner's action will be taken with such promptness as to not unreasonably delay the Work or the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Owner's professional judgement to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions

for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.

The Owner's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraph 3.3, 3.5, and 3.12. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Owner will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related Documents required by the Contract and assembled by the Contractor and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Owner agree, the Owner will provide one or more project representatives to assist in carrying out the Owner's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Owner will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Owner's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Owner shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Owner to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Owner will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Owner will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definitions. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in questions between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Decision of Owner. Claims, including those alleging an error or omission by the Owner, shall be referred initially to the Owner for action as provided in Paragraph 4.4. A decision by the Owner, as provided in subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Owner in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Owner is vacant, (2) the Owner has not received evidence or has failed to render a decision within agreed time limits, (3) the Owner has failed to take action required under subparagraph 4.4.4 within 30

days after the Claim is made or, (4) 45 days have passed after the Claim has been referred to the Owner.

4.3.3 Time Limits on Contractor Claims. Claims by Contractor must be made within **10** days after Contractor first recognizes the conditions giving rise to the Claim, whichever is later; provided, however, that Contractor shall use its best efforts to furnish the Owner and Owner, as expeditiously as possible, with notice of any Claim once such Claim is recognized, and shall cooperate with the Owner and the Owner in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 10 days after the Owner has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Owner for initial determination, subject to further proceeding pursuant to Paragraph 4.4. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with the concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and/or preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make claims for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) suspension or (7) other reasonable grounds, Claims shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

4.3.8.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice pursuant to Paragraph 4.3.3 shall be provided. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on the Completion Date of the Work. In the case of continuing delay, only one Claim is necessary.

4.3.8.2 If unusually severe weather conditions are the basis for Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were unusually severe for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction to the extent critical path activities were delayed. In the event Contractor establishes that its Completion Date was impacted by unusually severe weather, Contractor shall be entitled to additional time but not compensation.

4.3.9 Injury or Damage to Persons or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding fourteen (14) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in subparagraphs 4.3.7, or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Owner will review Claims and take one or more of the following preliminary actions within fourteen (14) days of receipt of a Claim; (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Owner expects to take action, (3) reject the Claim in whole or in part stating the reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a claim has been resolved, the Owner will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the Party making the Claim shall, within ten days after the Owner's preliminary response, take one or more of the following actions; (1) submit additional supporting data requested by the Owner, (2) modify the initial Claim or (3) notify the Owner that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Owner, the Owner will notify the parties in writing that the Owner's decision will be made within seven days, which decision shall be final and binding on the parties but subject to later resolution as provided herein. Upon expiration of such time period, the Owner will render to the parties the Owner's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.5 If Contractor is dissatisfied with any decision made by Owner pursuant to Paragraph 4.4.4, any cause of action based upon that decision, whether in Contract or tort, law or equity, shall be commenced not later than one (1) year after the date of Substantial Completion of the Work. Notwithstanding the foregoing, as to any and all acts or failures to act by the Owner, Contractor shall commence any cause of action, based upon any and all theories, whether in Contract or tort, law or equity, not later than one (1) year after the date of Substantial Completion of the Work.

ARTICLE 5 - SUB-CONTRACTORS

5.1 DEFINITIONS

5.1.1 A sub-contractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "sub-contractor" is referred to throughout the contract Documents as if singular in number and means a sub-contractor or an authorized representative of the sub-contractor. The term "sub-contractor" does not include a separate contractor or sub-contractors of a separate contractor, and a person or entity who has a direct contract with the Contractor to supply any material incorporated into the Work.

5.1.2 A sub-subcontractor is a person or entity who has a direct or indirect contract with a sub-contractor to perform a portion of the Work at the site. The term "sub-contractor" is referred to throughout the Contract Documents as if singular in number and means a sub-subcontractor or an authorized representative of the sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Owner the names of persons or the entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner or the Owner has reasonable objection to any such proposed person or entity. Failure of the Owner or Owner to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a sub-contractor or person or entity previously selected if the Owner or Owner makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONSHIPS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each sub-contractor, to the extent of the Work to be performed by the sub-contractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner under the Contract Documents with respect to the Work to be performed by the sub-contractor so that subcontracting thereof will not prejudice such rights, and shall allow to the sub-contractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each sub-contractor to enter into similar agreements with sub-subcontractors. The Contractor shall make available to each proposed sub-contractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the sub-contractor will be bound, and, upon written request of the sub-contractor, identify to the sub-contractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

Sub-contractors shall similarly make copies of applicable portions of such documents available to their

respective proposed sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the sub-contractor in writing; and
- .2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work has been suspended for more than 30 days, the sub-contractor's compensation shall be equitably adjusted.

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the work,

promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Owner; a Construction Change Directive requires agreement by the Owner and Owner and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Paragraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Owner and signed by the Owner, Contractor and Owner stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in subparagraph 7.3.3.

7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work, which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time, and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Owner and signed by the Owner and Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in subparagraph 7.3.6

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit.

In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this subparagraph 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of small tools, whether rented from the Contractor or others. The rental value of the Contractor's own equipment shall not be more than 50% of the fair rental value of such equipment in Pueblo County and in no event shall the aggregate amount charged to the Owner for such equipment exceed 50% of the fair market value of the equipment itself. Fair market value shall be based on the depreciated value of any Contractor owned equipment as shown on Contractor's books. Small tools and consumables shall be included in overhead;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; however, cost of premiums for all bonds and insurance shall not be added to the construction charges until such changes would total 5% of the original Contract amount.
- .5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work of substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Owner for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

7.5 AGREED OVERHEAD AND PROFIT RATES

7.5.1 For any adjustments to the Contract Sum which are based on other than the unit prices method, the Contractor agrees to charge, and accept, as payment for overhead and profit, the following percentages of costs attributable to the change in the Work;

- .1 for the sub-contractor, 12% of the net extra cost of the Work it performs;
- .2 for the Contractor, 6% of the net extra cost of the Work performed by sub-contractors;
- .3 for the Contractor, 12% of the net extra cost of the Work it performs with its own forces.

ARTICLE 8 - TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work shall be the date issued in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Owner in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Owner, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order, but only to the extent such delay is a critical path delay which will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of delay and (3) is of a duration not less than one (1) day.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

8.3.4 No extension of time will be allowed for extra work authorized by the Owner, unless the time of completion is adjusted and agreed to prior to the issuance of Change Order for the extra Work. If any time adjustment is agreed to, it will be so stated in writing on Change Order and accepted by the Owner.

8.3.5 No extension of time will be allowed unless the Contractor shall show that the entire Work of his Contract was or will be delayed for the extension requested.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Upon execution of the Agreement, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Owner may require, such as copies of requisitions from sub-contractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a sub-contractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, sub-contractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner determines is properly due, or notify the Contractor and Owner in writing of the Owner's reasons for withholding certification in whole or in part as provided in subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner to the Owner, based on the Owner's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods techniques, sequences or procedures, (3) review copies of requisitions received from sub-contractors and material suppliers and other requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by subparagraph 9.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the application, the Owner will notify the Contractor and Owner as provided in subparagraph 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations to the Owner. The Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- .1** defective Work not remedied
- .2** claims filed or reasonable evidence indicating probable filing of such claims
- .3** failure of the Contractor to make payments properly to sub-contractors or for labor, materials, or equipment;
- .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5** damage to the Owner or another contractor;
- .6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7** failure in the Owner's reasonable judgement to carry out the Work in accordance with the Contract Documents.

9.5.2 When any of the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Owner.

9.6.2 The Contractor shall promptly pay each sub-contractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such sub-contractor's portion of the Work, the amount to which said sub-contractor is entitled, reflecting percentage actually retained from payments to the Contractor on account of such sub-contractor's portion of the Work. The Contractor shall, by appropriate agreement with each

sub-contractor, require each sub-contractor to make payments to sub-subcontractors in similar manner.

9.6.3 The Owner will, on request, furnish to a sub-contractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner and Owner on account of portions of the Work done by such sub-contractor.

9.6.4 Neither the Owner nor Owner shall have an obligation to pay or to see to the payment of money to a sub-contractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in subparagraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Owner, then the Contractor may, upon thirty additional days' written notice to the Owner and Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut down delay and start-up which shall be accomplished as provided in Article 7.

9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under, or pursuant to, the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Owner will make a site visit to determine whether the Work or designated portion thereof is substantially complete. If the Owner's observation discloses any item, whether or not included on the Contractor's list, which is not in accordance with

the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. The Contractor shall then submit a request for another observation by the Owner to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damages to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under subparagraph 11.3.10 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner as provided under subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Owner shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final acceptance and upon receipt of a final Application for Payment, the Owner will promptly make a site visit and, when the Owner finds the Work appears to be acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate of Payment stating that to the best of the Owner's knowledge, information and belief, and on the basis of the Owner's observations, the Work appears to have been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials, and equipment, and other indebtedness

connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a sub-contractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner so confirms, the Owner shall, upon application by the Contractor and certification by the Owner, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in subparagraph 4.3.5.

9.10.4 Acceptance of final payment by the Contractor, a sub-contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in subparagraph 4.3.5.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Owner. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in current OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any sub-contractor, any materialman or supplier or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating

to asbestos or polychlorinated biphenyl (PCB).

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury or loss to:

- .1** employees on the Work and other persons who may be affected thereby;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's sub-contractors or sub-subcontractors; and
- .3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible at its own expense, for all measures necessary to protect any adjacent property, and any damage to such property shall be promptly repaired by Contractor.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a sub-contractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Owner or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Owner.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety or persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 - INSURANCE AND ASSURANCE OF COMPLETION (BONDS)

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a sub-contractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under worker's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees.
- .3 claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by subparagraph 11.1.1 and purchased by Contractor shall be written for not less than the limits set forth below, or required by law, whichever is greater. Providing limits of coverage less than as specified and extending the limits through the use of "Umbrella" coverage shall be permitted only with review and approval by the Owner.

- .1 Worker's Compensation as required by all applicable State, or other laws including Employer's Liability with a limit of at least \$100,000 per individual;
- .2 Commercial General Liability including Contractor's Liability, Contingent Liability, Contractual Liability, completed operations, endorsements, and Products Liability all on an occurrence basis with bodily Injury Coverage and Broad Form Property Damage Endorsement. Remove the XC-U exclusion relating to Explosion, Collapse, and Underground Property Damage. Completed Operations Liability shall be kept in force for at least two (2) years after the date of final completion. Limits shall be at least:

Bodily Injury	
Each Person	\$1,000,000
Each Occurrence.....	\$1,000,000
Property Damage	
Each Accident.....	\$500,000
Aggregate.....	\$500,000 or combined single limit of \$1,000,000;

- .3 Comprehensive Automobile Liability including non-owned and hired car coverage as well as owned vehicles with limits at least:
Bodily Injury

Each Person.....\$1,000,000
 Each Occurrence.....\$1,000,000
 Property Damage
 Each Occurrence.....\$1,000,000 or combined single limit of \$1,000,000;

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner within ten (10) days of the Notice to Proceed. These Certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, Contractor, sub-contractors, and sub-subcontractors in the Work.

11.3.1.1 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. The Owner shall purchase and maintain an Installation Floater Policy providing coverage for the Work. The policy will be written on a replacement cost basis with a 100% co-insurance clause on an "All Risk" basis to include the demolition, renovation, and remodeling. There will be a \$1,000 deductible per occurrence on the insurance policy and the Contractor and sub-contractors shall be responsible for payment of this deductible. The policy provides coverage to the Contractor and sub-contractors as their interests appear. However, the Contractor and all sub-contractors are encouraged to purchase their own installation floater which will give them coverage for labor and materials on the portion of their Contract. It is also encouraged that Contractor and all sub-contractors have adequate coverage for their tools and equipment since the Owners have no insurable interest in these items and cannot purchase coverage for them. Any loss on these items is the responsibility of the Contractor.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the

Contractor, sub-contractors and sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.3.2 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

11.3.3 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused to the extent (1) of actual recovery of any insurance proceeds under policies obtained pursuant to this Paragraph and (2) permitted by the applicable policies of insurance.

11.3.4 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of subparagraph 11.3.6 for damages caused by fire or other perils covered by this separate property, insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.5 Before an exposure to loss may occur, the Owner shall file with the Contractor a certificate of insurance evidencing such insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.6 Waivers of Subrogation. If permitted by the Owner's and the Contractor's insurance companies, the Owner and Contractor waive all rights against (1) each other and any of their sub-contractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, Owner's consultants, separate contractors describe in Article 6, if any, and any of their sub-contractors, sub-subcontractors, agents employees, for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Owner, Owner's consultants, separate contractors described in Article 6, if any, and the sub-contractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly, or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.7 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner for the insured, as their interest may appear, subject to requirements of any applicable

mortgagee clause and of subparagraph 11.3.9. The Contractor shall pay sub-contractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require sub-contractors to make payments to their sub-subcontractors in similar manner.

11.3.8 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in paragraph 4.5. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

11.3.9 The Owner shall have power to adjust and settle a loss with insurers.

11.3.10 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 ASSURANCE OF COMPLETION

11.4.1 The successful bidder shall furnish an assurance of completion prior to the execution of any Contract under this solicitation. This assurance may be:

- a) a performance and payment bond in a penal sum of 100 percent of the contract price;
- b) a separate performance and payment bonds each for 50% or more of the contract price.
- c) a cash escrow of 20 percent of the contract price
- d) an irrevocable letter of credit of 25 percent of the contract price

11.4.2 If the Contractor is providing a performance and payment bond it shall be in a penal sum of 100 percent (100%) of the Contract price. Bonds must be obtained from guarantee or surety companies acceptable to the U.S. government and authorized to do business in the State of Colorado. Individual sureties will not be considered. Each bond shall clearly state the rate of premium and the total amount of premium charged. The current signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond shall be on or after the execution date of the Contract.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner's observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owner's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under subparagraph 9.9.1 or by terms of an applicable special warranty required by the Contract Documents, any of the Work is not found to be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such conditions. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the work. This obligation under this subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2. shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in subparagraph 12.2.2. relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents 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 the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS**13.1 GOVERNING LAW**

13.1.1 The Contract shall be governed by the Law of the State of Colorado.

13.1.2 Venue of any suit or cause of action under or related to this Contract shall be in Pueblo County, Colorado. Should any section of this Contract be found to be invalid, it is agreed that all other sections shall remain in full force and effect.

13.1.3 The General Contractor selected and under contract will be required to comply with the Employment Eligibility Verification Program (EEVP). The State of Colorado requires that the General Contractor provide the information prescribed in the EEVP. The General Contractor in turn provides HACP with a filled out form verifying that all sub-contractors under contract for this project as well as the General Contractor do not have illegal aliens working for them.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Owner or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made Owner may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Owner, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under subparagraph 13.5.1 the Owner will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give time of notice to the Owner of when and where tests and inspections are to be made so the Owner may observe such procedures. The Owner shall bear such costs except as provided in subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under subparagraph 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Owner's services and expenses.

13.5.4 Required certificates of testing, inspections or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner.

13.5.5 If the Owner is to observe tests, inspections or approvals required by the Contract Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear annual interest from the date payment is due at the rate of three (3%) percent above prime as printed in The Wall Street Journal on the date payment is due.

13.7 EQUAL EMPLOYMENT OPPORTUNITY

13.7.1 During performance of this Contract, the Contractor agrees that it shall not discriminate against any employee, applicant for employment of sub-contractor or supplier because of race, color, religion, sex, national origin, or handicap. The Contractor further agrees that it shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

13.8 24 CFR PART 135.38 SECTION 3 CLAUSE

13.8.1 All Section 3 covered Contracts shall include the following clauses:

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

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

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

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

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

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

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

13.8.2 Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

13.8.2.1 At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

13.8.2.2 At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

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

13.8.4 The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, a notice advising the labor organization or workers representative of the Contractor's commitments under this Section 3 clause, and will

post copies to the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3.

13.8.5 The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the sub-contractor is in violation of the regulations in 24 CFR part 135.

The Contractor will not sub-contract with any sub-contractor where the Contractor has notice or knowledge that the sub-contractor has been found in violation of the regulations in 24 CFR part 135.

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

13.8.7 Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.9 LABOR STANDARDS – DAVIS BACON AND RELATED ACTS – MINIMUM WAGES

This addendum is used for both the Project-Based Voucher HACP Contract and the Project-Based Rental Assistance (“PBRA”) HACP Contract under the Rental Assistance Demonstration and is applicable for all construction or repair work on projects that are initiated within eighteen (18) months after the effective date of the HACP contract. For PBRA HACP Contracts, it is “part of the General Conditions”.

13.9.1. HUD-FEDERAL LABOR STANDARDS PROVISIONS

The owner is responsible for inserting the entire text of section 1 of this Addendum in all construction contracts for construction or repair work on the project that is initiated within eighteen (18) months of the effective date of the HACP contract and, if the owner performs any rehabilitation work on the project, the owner must comply with all provisions of section 1. (Note: Sections 1(b) and (c) apply only when the amount of the prime contract exceeds \$ 100,000.)

(a)(1)(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and

mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's [12514] payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the

contractors under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due.

(3)(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not

be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of

the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5 (a)(3)(i), and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the [12515] payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 3801 et seq. of Title 31 of the United States Code.

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

(4)(i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on

a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in section 1(a)(1) through (11) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section 1(a).

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

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

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

(10)(i) Certification of Eligibility. By entering into this Addendum, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24. [12516]

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

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Addendum are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Addendum to his employer.

(b) Contract Work Hours and Safety Standards Act. The provisions of this paragraph (b) are applicable only where the amount of the prime contract exceeds \$ 100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

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

(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of **\$5,000** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own

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

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

(c) Health and Safety. The provisions of this paragraph (c) are applicable only where the amount of the prime contract exceeds \$ 100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

13.9.2. WAGE AND CLAIMS ADJUSTMENTS

The owner shall be responsible for the correction of all violations under section 1 of this Addendum, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the owner or other contractor or a failure by the owner or other contractor to submit payrolls and related reports, the owner shall be required to place an amount in escrow, as determined by HUD sufficient to pay persons employed on the work covered by the Addendum the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Addendum, as well as an amount determined by HUD to be sufficient to satisfy any liability of the owner or other contractor for liquidated damages pursuant to section 1 of this Addendum. The amounts withheld may be disbursed by HUD for and on account of the owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 1.

13.9.3. EVIDENCE OF UNIT(S) COMPLETION; ESCROW

(a) The owner shall evidence the completion of the unit(s) by furnishing the Contract Administrator a certification of compliance with the provisions of sections 1 and 2 of this Addendum, and that to the best of the owner's knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of these provisions of the Addendum. In the event there are any such pending claims to the knowledge of the owner, the Contract Administrator, or HUD, the owner will place a sufficient amount in escrow, as directed by the Contract Administrator or HUD, to assure such payments.

(b) The escrows required under this section and section 2 of this Addendum shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing and approving such escrows shall be approved by HUD.

Article 13.9.4 Employment Eligibility Verification Program (EEVP)

The General Contractor selected and under contract will be required to comply with the Employment Eligibility Verification Program (EEVP). The State of Colorado requires that the General Contractor provide the information prescribed in the EEVP. The General Contractor in turn provides the HACP with a completed form verifying that all sub-contractors under contract for this project as well as the General Contractor do not have illegal aliens working for them.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 days through no act or fault of the Contractor or a sub-contractor, sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as declaration of national emergency, making material unavailable;

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner and Owner, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a sub-contractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Owner, terminate the Contract and recover from the Owner as provided in subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 in the Owner's reasonable judgement repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to sub-contractors for materials or labor in accordance with the respective agreements between the Contractor and the sub-contractors;
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 is guilty of material breach of a provision of the Contract Documents;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents, or
- .7 fails after commencement of the Work to proceed continuously with the construction and

completion of Work for more than ten (10) days, except as permitted under the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Owner that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's service and expenses made necessary thereby, such excess shall be paid to the contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner as the case may be, shall be certified by the Owner, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.4 OWNER'S TERMINATION FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract, in whole or in part, for the Owner's convenience and without cause. Termination by the Owner under this Paragraph shall be by a notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

14.4.2 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitations, anticipated profits.

14.4.3 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

BID FOR LUMP SUM CONTRACT
HOUSING AUTHORITY OF THE CITY OF PUEBLO
201 S. VICTORIA AVENUE, PUEBLO, CO 81003 (719) 542-6741

BID NUMBER: I.F.B. 21-548-AAP
PROJECT: ASBESTOS ABATEMENT – CRAWFORD TOWNHOMES
LOCATION: @ Sangre de Cristo Apartments - Pueblo, Colorado

The undersigned, being familiar with the local conditions affecting the cost of the Work, and having examined the Plans and Specifications with related documents and the site of the proposed Work, and being familiar with all of the conditions surrounding the Work of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to landscape the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. The price includes year 1 of landscaping maintenance according to the Contract documents. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents, of which this proposal is a part. The undersigned hereby proposes to complete the **ASBESTOS ABATEMENT – CRAWFORD TOWNHOMES** located at the **Sangre de Cristo Apartments - Pueblo, Colorado**, for the sum of: \$ _____ /100 dollars (\$ _____).

In submitting this bid, it is understood that the right is reserved by the Owner to reject any and all bids and to waive informalities. If written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned within **10** days after the opening thereof, or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form and furnish the required bond(s) and Certificates of Insurance within **10** days after the contract is presented for signature.

Time for Completion _____ Calendar Days of buildings (14-E (1), 15-D (2), 16-A (3), 17-G (4)) on Scopes of Work (**Not to exceed (40 days)**).

Time for Completion _____ Calendar Days of buildings (remaining 9 buildings) on Scopes of Work (**Not to exceed (90 days)**). (**to run simultaneously with time for completion of buildings (1-4) on Scopes of Work**) **TOTAL PROJECT NOT TO EXCEED 90 DAYS**

No additional days will be allowed if Deduct Alternate #1 is added.

Bidder acknowledges receipt of the addenda(s) _____, if applicable

The bid security which is **5% of the bid amount** is submitted herewith in accordance with the specifications.

DEDUCT ALTERNATE NO. 1

Remove non-friable, asbestos-containing 12” x 12” off white/tan floor tile and yellow mastic over tan/multi-colored floor tile and black mastic. The floor tile and yellow mastic are negative for the presence of asbestos while the tan/multi-colored tile and black mastic contains between 4-20% Chrysotile asbestos. The material was observed on the floors throughout the 1st and 2nd levels of the subject building.

PRICE: \$ _____

UNIT PRICES

Unit Price complete including materials, labor, overhead and profit.

- Remove asbestos containing TSI heatboard: _____ per sq. ft.
- Deduct asbestos containing TSI heatboard: _____ per sq. ft.
- Remove asbestos containing roll textured plaster: _____ per sq. ft.
- Deduct asbestos containing roll textured plaster: _____ per sq. ft.
- Remove asbestos containing 12” x 12” VCT floor tile/mastic: _____ per sq. ft.
- Deduct asbestos containing 12” x 12” VCT floor tile/mastic: _____ per sq. ft.
- Remove asbestos containing texture on concrete: _____ per sq. ft.
- Deduct asbestos containing texture on concrete: _____ per sq. ft.
- Remove asbestos containing smooth plater: _____ per sq. ft.
- Deduct asbestos containing smooth plater: _____ per sq. ft.
- Remove and dispose of mercury containing thermostat: _____ ea.

Dated this ____ day of _____, 2021.

THE BIDDER: _____

Address

By: _____

ATTEST: _____

Secretary (SEAL - if bid is by Corporation)

Signatures: If the Proposal is being submitted by a Corporation, the Proposal should be signed by an Officer, i.e., President or Vice President. The signature of the Officer signing shall be attested to by the Secretary and properly sealed. If the Proposal is being submitted by an individual or a partnership, the Proposal shall so indicate and be properly signed.

BID FOR LUMP SUM CONTRACT
HOUSING AUTHORITY OF THE CITY OF PUEBLO
201 S. VICTORIA AVENUE, PUEBLO, CO 81003 (719) 542-6741

BID NUMBER: I.F.B. 21-548-AAP
PROJECT: ASBESTOS ABATEMENT – CRAWFORD TOWNHOMES
LOCATION: @ Sangre de Cristo Apartments - Pueblo, Colorado

The undersigned, being familiar with the local conditions affecting the cost of the Work, and having examined the Plans and Specifications with related documents and the site of the proposed Work, and being familiar with all of the conditions surrounding the Work of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to landscape the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. The price includes year 1 of landscaping maintenance according to the Contract documents. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents, of which this proposal is a part. The undersigned hereby proposes to complete the **ASBESTOS ABATEMENT – CRAWFORD TOWNHOMES** located at the **Sangre de Cristo Apartments - Pueblo, Colorado**, for the sum of: \$ _____ /100 dollars (\$ _____).

In submitting this bid, it is understood that the right is reserved by the Owner to reject any and all bids and to waive informalities. If written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned within **10** days after the opening thereof, or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form and furnish the required bond(s) and Certificates of Insurance within **10** days after the contract is presented for signature.

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UNIT PRICES

Unit Price complete including materials, labor, overhead and profit.

- Remove asbestos containing TSI heatboard: _____ per sq. ft.
- Deduct asbestos containing TSI heatboard: _____ per sq. ft.
- Remove asbestos containing roll textured plaster: _____ per sq. ft.
- Deduct asbestos containing roll textured plaster: _____ per sq. ft.
- Remove asbestos containing 12” x 12” VCT floor tile/mastic: _____ per sq. ft.
- Deduct asbestos containing 12” x 12” VCT floor tile/mastic: _____ per sq. ft.
- Remove asbestos containing texture on concrete: _____ per sq. ft.
- Deduct asbestos containing texture on concrete: _____ per sq. ft.
- Remove asbestos containing smooth plater: _____ per sq. ft.
- Deduct asbestos containing smooth plater: _____ per sq. ft.
- Remove and dispose of mercury containing thermostat: _____ ea.

Dated this ____ day of _____, 2021.

THE BIDDER: _____

Address

By: _____

ATTEST: _____

Secretary (SEAL - if bid is by Corporation)

Signatures:

If the Proposal is being submitted by a Corporation, the Proposal should be signed by an Officer, i.e., President or Vice President. The signature of the Officer signing shall be attested to by the Secretary and properly sealed. If the Proposal is being submitted by an individual or a partnership, the Proposal shall so indicate and be properly signed.