

**EXHIBIT VIII-J**

**CONTRACT DOCUMENTS**

**SAMPLE CONTRACT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

by and between \_\_\_\_\_ herein called  
(CORPORATE NAME OF PUBLIC AGENCY)

"Owner" acting herein through its \_\_\_\_\_ and a  
(TITLE OF AUTHORIZED OFFICIAL)

corporation/ a partnership/an individual (Strike Out Inapplicable Terms) doing business as

\_\_\_\_\_, of \_\_\_\_\_

County of \_\_\_\_\_ and State of \_\_\_\_\_,

hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
hereinafter called the project, for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and all extra work in connection therewith, under the terms as stated in the General and Supplemental Conditions of the Contract, the Terms and Conditions of the Contract, and the Labor Standards Provisions of the Contract; and at his (its or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and Supplemental General Conditions of the Contract, the plans which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefore as prepared by \_\_\_\_\_ herein entitled the Architect/Engineer, and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the Contract.

The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_\_ consecutive calendar days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of \$ \_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 25, "Payments to Contractor," of the General Conditions.

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IN WITNESS WHEREOF, the parties to these presents have executed this Contract in six (6) counterparts, each of which shall be deemed an original in the year and day first above mentioned.

(SEAL)

ATTEST:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Secretary

By \_\_\_\_\_

\_\_\_\_\_  
Witness Title

\_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Secretary

By \_\_\_\_\_

\_\_\_\_\_  
Witness Title

\_\_\_\_\_

\_\_\_\_\_  
Address

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### GENERAL CONDITIONS OF THE CONTRACT

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#### 1. Contract and Contract Documents

The project to be constructed pursuant to this Contract will be financed with assistance from the Colorado CDBG Program and is subject to all applicable Federal and State laws and regulations.

The Plans, Specifications and Addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

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#### 2. Definitions

The following terms as used in this Contract are respectively defined as follows:

(a) **CONTRACTOR:** A person, firm or corporation with whom the contract is made by the Owner, i.e., the Local Public Agency.

(b) **SUBCONTRACTOR:** A person, firm or corporation supplying labor and materials or only labor for work at the site of the project, for and under separate contract or agreement with the Contractor.

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(c) WORK ON (AT) THE PROJECT: Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.

### 3. Additional Instructions and Detail Drawings

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly: (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

### 4. Shop Setting Drawings

The Contractor shall submit promptly to the Architect/Engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/Engineer with two corrected copies. If requested by the Architect/Engineer, the Contractor must furnish additional copies.

Regardless of corrections made in or approval given to such drawings by the Architect/Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless he notifies the Architect/Engineer in writing of any deviations at the time he furnishes such drawings.

### 5. Materials, Services, and Facilities

(a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

(b) Any work necessary to be performed after regular hours, on Sundays or Legal Holidays, shall be performed without additional expenses to the Owner.

### 6. Contractor's Title to Materials

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims, or encumbrances.

### 7. Inspection and Testing of Materials

(a) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as part of the contract.

(b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

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### 8. "Or Equal" Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the contractor without the Architect/Engineer's written approval.

### 9. Patents

(a) The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

(b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not by or through the Contractor.

(c) If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connections with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

### 10. Surveys, Permits, and Regulations

Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the Contractor all surveys necessary for the execution of the work. The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.

The Contractor shall comply with all laws, ordinances, rules, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

### 11. Contractor's Obligations

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required.

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the Owner.

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### 12. Weather Conditions

In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

### 13. Protection of Work Property - Emergency

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the Contract or by the Owner, or his duly authorized representatives.

In case of an emergency which threatens loss or injury of property, and/or safety or life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. He shall notify the Architect/Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer for approval.

Where the Contractor has not taken action but has notified Architect/Engineer of an emergency threatening injury to persons or damage to the work of any adjoining property, he shall act as instructed or authorized by the Architect/Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 17 of the General Conditions.

### 14. Inspection

The authorized representatives and agents of the Colorado Department of Local Affairs shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

### 15. Reports, Records, and Data

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedule, payrolls, reports, estimates, records, and other data as the Owner may request concerning work performed or to be performed under this contract.

### 16. Superintendence by Contractor

At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

### 17. Changes in Work

No changes in the work covered by the approved Contractor Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more of the following methods:

- (a) Unit bid prices previously approved
- (b) An agreed lump sum
- (c) The actual cost of:
  - (1) Labor, including foreman;

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- (2) Materials entering permanently into the work;
- (3) The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
- (4) Power and consumable supplies for the operation of power equipment;
- (5) Insurance;
- (6) Social Security and old age and unemployment contributions.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

### 18. Extras

Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner or its Architect/Engineer, acting officially for the Owner, and the price is stated in such order.

### 19. Time for Completion and Liquidated Damages

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein and definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract, PROVIDED, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; PROVIDED, FURTHER, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Local Public Agency;

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- (b) To unforeseen cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:

PROVIDED, FURTHER, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the cause of the delay, shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

### **20. Correction of Work**

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected as the case may be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgement of the Architect/Engineer shall be equitable.

### **21. Subsurface Conditions Found Different**

Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such changes in the Plans and/or Specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 17 of the General Conditions.

### **22. Claims for Extra Cost**

No claim for extra work or costs shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 17(c) of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give access to accounts relating thereto.

### **23. Right of the Owner to Terminate Contract**

In the event that any of the provisions of this Contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract, such notices to contain the reason for such intention to terminate the Contract, and unless within (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the Contract; provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such material, appliances, and plant as may be on the site of the work and necessary therefore.

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### 24. Construction Schedule and Periodic Estimates

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner: (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

### 25. Payments to Contractor

(a) Not later than the 15th day of each calendar month the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure the proper performance of this Contract the Owner may retain five percent (5%) of the amount of each estimate until final completion and acceptance of all work covered by this Contract; PROVIDED, that the Contractor shall submit his estimate not later than the first day of the month; PROVIDED, FURTHER, that the Owner at any time after fifty percent (50%) of work has been completed, if he finds that satisfactory progress is being made, may make any of the remaining progress payments in full; PROVIDED, FURTHER, that on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentages thereon, less authorized deductions.

(b) In preparing estimates the material delivered on the site preparatory to work done may be taken into consideration.

(c) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.

(d) OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF: The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has written, direct or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged hereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be constructed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

### 26. Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance and Payment Bond.

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### 27. Payments by Contractors

The Contractor shall pay (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof, not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and (c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent to each subcontractor's interest therein.

### 28. Insurance

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

**(a) COMPENSATION INSURANCE:** The Contractor shall procure and shall maintain during the life of his Contract Workmen's Compensation Insurance as required by applicable State law for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

**(b) CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE:** The Contractor shall procure and shall maintain during the life of this Contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.

**(c) SUBCONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE:** The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions specified in subparagraph (b) hereof, (2) insure the activities of his policy specified in subparagraph (b) hereof.

**(d) SCOPE OF INSURANCE AND SPECIAL HAZARDS:** The insurance required under subparagraphs (b) and (c) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated in the Supplemental General Conditions.

**(e) BUILDER'S RISK INSURANCE (FIRE & EXTENDED COVERAGE):** Until the project is completed and accepted by the Owner, the Owner, or Contractor (at the Owner's option as indicated in the Supplemental General Conditions, Form (HUD-4238-N) is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from his obligation to complete, according to plans and specifications, the project covered by the Contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.

**(f) PROOF OF CARRIAGE OF INSURANCE:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration

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of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after (10) days written notice has been received by the Owner."

### **29. Contract Security**

The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this Contract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in a separate instrument in accordance with local law.

### **30. Additional or Substitute Bond**

If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

### **31. Assignments**

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

### **32. Mutual Responsibility of Contractors**

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractors or subcontractors by agreement or arbitration if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

### **33. Separate Contract**

The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Architect/Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his on work.

### **34. Subcontracting**

(a) The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty sub-contractors.

(b) The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.

## EXHIBIT VIII-J, Cont

(c) The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons employed by him.

(d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contract by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

(e) Nothing contained in this Contract shall create any contractual relation between any subcontractor and the Owner.

### **35. Architect/Engineer's Authority**

The Architect/Engineer shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or specifications, the determination or decisions of the Architect/Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner to any extent by such question.

The Architect/Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the Owner shall be adjusted and determined by the Architect/Engineer.

### **36. Stated Allowances**

The Contractor shall include in his proposal the cash allowances stated in the Supplemental General Conditions. The Contractor shall purchase the "Allowed Materials" as directed by the Owner on the basis of competitive bids. If the actual price for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the contract price shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

### **37. Use of Premises and Removal of Debris**

The Contractor expressly undertakes at his own expense:

- (a) to take every precaution against injuries to persons or damage to property;
- (b) to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- (c) to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (d) to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- (e) before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;

## EXHIBIT VIII-J, Cont

- (f) to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer, not cut or otherwise alter the work of any other Contractor.

### **38. Quantities of Estimate**

Wherever the estimated quantities or work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

### **39. Lands and Right-of-Way**

Prior to the start of construction, the Owner shall obtain lands and rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

### **40. General Guaranty**

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of work unless a longer period is specified. The Owner will give notice of unserved defects with reasonable promptness.

### **41. Conflicting Conditions**

Any provisions of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

### **42. Notice and Service Thereof**

Any notice to any Contractor from the Owner relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

### **43. Provisions Required by Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

### **44. Protection of Lives and Health**

"The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary."

## EXHIBIT VIII-J, Cont

### 45. Subcontracts

**"The Contractor will insert in any subcontract the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development or Colorado Department of Local Affairs may, by instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made."**

### 46. Interest of Members of or Delegate to Congress

No members of or Delegate to Congress shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

### 47. Other Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

### 48. Use and Occupancy Prior to Acceptance by Owner

The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

(a) Secures written consent of the Contractor except in the event, in the opinion of the Architect/Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of such list items or other contract requirements.

(b) Secures endorsement from the insurance-carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or,

(c) When the notice consists of more than one building, and one of the buildings is occupied, secures permanent firm and extended coverage insurance, including a permit to complete construction. Consent of the Surety must also be obtained.

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, or national origin.

### 49. Photographs of the Project

The Contractor shall furnish photographs of the project before, during, and after construction in the quantities and as described in the Supplemental General Conditions.

## EXHIBIT VIII-J, Cont

### 50. Suspension of Work

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such delay with such time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

### 51. Minimum Wage Rate for Laborers and Mechanics

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated to reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Local Public Agency for the cashing of the same without cost of expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated 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 Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

### 52. Underpayment of Wages or Salaries

In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the Local Public Agency or in addition to such other rights as may be afforded it under this Contract shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the Local Public Agency may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the Local Public Agency for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

### 53. Anticipated Costs of Fringe Benefits

If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this Contract; provided, however, 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. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the Contractor must be submitted to the Local Public Agency with the first payroll filed by the Contractor subsequent to receipt of the findings.

### 54. Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360: Title 40 U.S.C., Sections 327-332)

(a) **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, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such or to work in excess of 40 hours in such workweek unless such laborer or mechanic

## EXHIBIT VIII-J, Cont

received compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.

**(b) VIOLATION: LIABILITY FOR UNPAID WAGES LIQUIDATED DAMAGES.** In the event of any violation of the clause set forth in paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a).

**(c) WITHHOLDING FOR LIQUIDATED DAMAGES.** The Local Public Agency shall withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (b).

**(d) SUBCONTRACT.** The Contractor shall insert in any subcontract the clauses set forth in paragraphs (a), (b), and (c) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

### 55. Employment or Apprentices/Trainees

**(a) APPRENTICES** will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his 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 Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

**(b) TRAINEES.** Except as provided in 29 CFR 5.15, 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, Manpower Administration, Bureau of Apprentice and training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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(c) **EQUAL EMPLOYMENT OPPORTUNITY.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

### 56. Section 3

(a) 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. 70u (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.

(b) 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.

(c) 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 persons) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) 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.

(e) 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.

(f) 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.

(g) 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).

### 57. Employment of Certain Persons Prohibited

No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered in this Contract.

### 58. Regulations Pursuant to So-Called "Anti-Kickback Act"

The Contractor shall comply with the applicable regulations (a copy of which is attached and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant

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to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 862; Title U.S.C., Section 874; and Title 40 U.S.C. Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by the subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

### **59. Employment of Laborers or Mechanics Not Listed in Aforesaid Wage Determination Decision**

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determination by the Local Public Agency and a report of the action taken shall be submitted by the Local Public Agency through the State Department of Local Affairs to the Secretary of Labor, United States Department of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Local Public Agency shall be referred through the State Department of Local Affairs to the Secretary of Labor for final determination.

### **60. Fringe Benefits Not Expressed as Hourly Wage Rates**

The Local Public Agency shall require, 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 wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Local Public Agency, shall be referred to the Secretary of Labor for determination.

### **61. Posting Wage Determination Decisions and Authorized Wage Deductions**

The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classifications of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed under such classifications, shall be posted at appropriate conspicuous points at the site of the work.

### **62. Complaints, Proceedings, or Testimony by Employees**

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract 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 Contract to his employer.

### **63. Claims and Disputes Pertaining to Wage Rates**

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the Contractor in writing to the Local Public Agency or Public Body for referral to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

### **64. Questions Concerning Certain Federal Statutes and Regulations**

All questions arising under this Contract which relate to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the aforesaid Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Acts, or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred through the Local Public Agency and to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

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### 65. Payrolls and Basic Payroll Records of Contractor and Subcontractors

The Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Local Public Agency or Public Body. The Contractor shall submit AT LEAST BI-WEEKLY to the Local Public Agency or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. **Each such payroll shall contain the "Weekly Statement of Compliance"** set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated, of the types described in Section 1(b)(2) of the Davis-Bacon Act,) daily and furnished by the Local Public Agency or Public Body. The Contractor shall submit weekly to the Local Public Agency or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated, of the types described in Section 1(b)(2) of the Davis-Bacon Act,) daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, 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 or subcontractor shall maintain records which shows 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. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, The Colorado Department of Local Affairs, the Local Public Agency, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

### 66. Specific Coverage of Certain Types of Work by Employees

The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this Contract pertains by persons employed by the Contractor or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

### 67. Ineligible Subcontractors

The Contractor must certify that none of the subcontractors are ineligible or debarred through HUD or the General Services Administration.

### 68. Provisions to be Included in Certain Subcontracts

The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts

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which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

### **69. Breach of Foregoing Federal Labor Standards Provisions**

In addition to the causes for termination of this Contract as herein elsewhere set forth, the Local Public Agency reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

### **70. Employment Practices**

The Contractor (1) shall, to the greatest extent practicable, follow hiring and employment practices for work on the project which will provide new job opportunities for the unemployed and underemployed, and (2) shall insert or cause to be inserted the same provision in each construction subcontract.

### **71. Contract Termination; Debarment**

A breach of Section 45 and the Federal Labor Standards Provisions, may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

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SUPPLEMENTAL CONDITIONS OF THE CONTRACT

1. ENUMERATION OF PLANS, SPECIFICATIONS, AND ADDENDA

Following are the Plans, Specifications, and addenda which form a part of this contract, as set for the in Paragraph 1 of the General Conditions, "Contract and Contract Documents:"

DRAWINGS

General Construction: \_\_\_\_\_

Heating and Ventilation: \_\_\_\_\_

Plumbing: \_\_\_\_\_

Electrical: \_\_\_\_\_

Other: \_\_\_\_\_

SPECIFICATIONS:

General Construction: Page \_\_\_\_\_ to \_\_\_\_\_ inclusive

Heating and Ventilation: Page \_\_\_\_\_ to \_\_\_\_\_ inclusive

Plumbing: Page \_\_\_\_\_ to \_\_\_\_\_ inclusive

Electrical: Page \_\_\_\_\_ to \_\_\_\_\_ inclusive

Other: \_\_\_\_\_: Page \_\_\_\_\_ to \_\_\_\_\_ inclusive

ADDENDA:

No. \_\_\_\_\_ Date: \_\_\_\_\_ No. \_\_\_\_\_ Date: \_\_\_\_\_

No. \_\_\_\_\_ Date: \_\_\_\_\_ No. \_\_\_\_\_ Date: \_\_\_\_\_

2. STATE ALLOWANCES:

Pursuant to Paragraph 36 of the General Conditions, the contract shall include the following cash allowances in his proposal.

(a) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

(b) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

(c) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

(d) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

3. SPECIAL HAZARDS

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

**EXHIBIT VIII-J, Cont**

**4. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE AND PROPERTY DAMAGE INSURANCE**

As required under Paragraph 28 of the General Conditions, the Contractor's Public Liability Insurance and Vehicle Liability Insurance shall be in an amount not less than \$ \_\_\_\_\_ for injuries, including accidental death, to any person, and subject to the same limit for each person, in an amount not less than \$ \_\_\_\_\_ on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$ \_\_\_\_\_.

The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the same amounts as specified in the preceding Paragraph or (2) insure the activities of his subcontractors in his own policy.

**5. PHOTOGRAPHS OF PROJECT**

As provided in Paragraph 49 of the General Conditions, the Contractor will furnish photographs in the number, type, and stage as enumerated below.

**6. SCHEDULE OF OCCUPATIONAL CLASSIFICATIONS AND MINIMUM HOURLY WAGE RATES AS REQUIRED UNDER PARAGRAPH 51 OF THE GENERAL CONDITIONS**

Given on Pages \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

**7. BUILDER'S RISK INSURANCE:**

As provided in the General Conditions, Paragraph 28(e), the Contractor will/will not maintain Builder's Risk Insurance (Fire and Extended Coverage) on a 100 percent completed value basis on the insurable portions of the project for the benefit of the Owner, the Contractor, and all subcontractors, as their interest may appear.

**8. SPECIAL EQUAL OPPORTUNITY PROVISIONS**

(The Equal Opportunity Language is contained within the sample contract, Exhibit I, Part II: Terms and Conditions, Section 4-8.)

**9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

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

**COMPLIANCE WITH AIR AND WATER ACTS:** During the performance of this Contract, the Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended. In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

(1) A stipulation by the contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

(2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(3) A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility

## EXHIBIT VIII-J, Cont

utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.

(4) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contract will take such action as the Government may direct as a means of enforcing such provisions.

### **10. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION.**

**A. LEAD-BASED PAINT HAZARDS** (Applicable to Contracts for construction or rehabilitation of residential structures): The construction or rehabilitation of residential structures is subject to the HUD lead-Based Paint regulations, 24 CFR 35. The Contractor and Subcontractors shall comply with the provisions for elimination of lead-based paint hazards under Subpart B of said regulations. The owner will be responsible for the inspections and certifications required under Section 35.14(F) thereof.

**B. USE OF EXPLOSIVES** (Modify as Required): When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, State and Federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel, or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least eight (8) hours before blasting is done, closed to such property. Any supervision or direction of use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

**C. DANGER SIGNALS AND SAFETY DEVICES** (Modify as Required): The Contractor shall make all necessary precaution to guard against damages to property and injury to persons. He shall put up and maintain in good conditions, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

### **11. WAGE RATE DETERMINATION / APPROPRIATE WAGE RATES SHALL BE INSERTED HERE**

## EXHIBIT VIII-J, Cont

### TERMS AND CONDITIONS OF THE CONTRACT

**1. TERMINATION OF CONTRACT FOR CAUSE.** If, through any cause, the Firm shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Firm shall violate any of the covenants, agreements, or stipulations of this Contract, the Local Public Agency shall thereupon have the right to terminate this Contract by giving written notice to the Firm of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all records and data, at the option of the Local Public Agency become its property.

Notwithstanding the above, the Firm shall not be relieved of liability to the Local Public Agency for damages sustained by the Local Public Agency by virtue of any breach of the Contract by the Firm, and the Local Public Agency may withhold any payments to the Firm for the purpose of set-off until such time as the exact amount of damages due the Local Public Agency from the Firm is determined.

**2. REPORTS AND INFORMATION.** The Firm, at such times and in such forms as the Local Public Agency may require, shall furnish the Local Public Agency such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

**3. RECORDS AND AUDITS.** The Firm shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Local Public Agency to assure proper accounting for all project funds. These records will be made available for audit purposes to the Local Public Agency or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the Local Public Agency.

**4. EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, the Firm agrees as follows:

a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Firm will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

c. The Firm will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to such books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Firm's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as

## EXHIBIT VIII-J, Cont

provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Firm will include the portion of the sentence immediately preceding paragraph a. and the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontractor or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanction for non-compliance; provided, however, that in the event the Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Firm may request the United States to enter into such litigation to protect the interests of the United States.

**5. CIVIL RIGHTS ACT OF 1964.** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion or religious affiliation or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.** No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

**7. "SECTION 3" COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES.** The work to be performed under this contract is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development through the State of Colorado and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the project area.

**8. SECTION 504 OF THE REHABILITATION ACT OF 1973.** The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified.

**9. INTEREST OF MEMBERS OF A LOCAL PUBLIC AGENCY.** No member of the governing body of the Local Public Agency and no other officer, employee, or agent of the Local Public Agency who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Firm shall take appropriate steps to assure compliance.

**10. INTEREST OF OTHER LOCAL PUBLIC OFFICIALS.** No member of the governing body of the Local Public Agency and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Firm shall take appropriate steps to assure compliance.

**11. ARCHITECTURAL BARRIERS .** All design specifications for the construction of any building or residence shall provide access to the physically handicapped in accordance with **the Architectural Barriers Act of 1968; the American With Disabilities Act of 1990 (28 CFR Part 36), and Colorado Revised Statute, CRS 9-5-101 to 112.**

**12. THE GOVERNMENT-WIDE RESTRICTION ON LOBBYING,** prohibits spending CDBG funds to influence or attempt to influence federal officials; requires the filing of a disclosure form when non-CDBG funds are used for such purposes; requires certification of compliance by the state to include the certification language in grant awards it makes to units of general local government at all tiers and that all subrecipients shall certify accordingly as imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

EXHIBIT VIII-J, Cont

LABOR STANDARDS PROVISIONS OF THE CONTRACT

All contracts must include the [Federal Labor Standards Provisions \(PDF\)](#) from the U.S. Department of Housing and Urban Development, Office of Labor Relations, to establish a complete document.